www.graphiant.com
Graphiant, Inc
1940 Zanker Road Suite 50
San Jose, CA 95112

IMPORTANT INFORMATION

This Master Services Agreement ("**Agreement**") between You ("**You**" or "**Customer**") and Graphiant, Inc. ("**Graphiant**") sets forth the terms and conditions that govern Your use of the **Graphiant Solutions** (defined below). Definitions of capitalized terms are set forth in Section 1 (Definitions).

YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT BY (A) DOWNLOADING, INSTALLING, ACCESSING, DEPLOYING, OR USING THE GRAPHIANT SOLUTIONS, OR (B) BY YOUR EXPRESS AGREEMENT. IF YOU DO NOT HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT OR YOU DO NOT AGREE WITH ITS TERMS, DO NOT USE GRAPHIANT SOLUTIONS. IF YOU PROCEED WITH DOWNLOAD, INSTALLATION, ACCESS, DEPLOYMENT, OR USE, YOU ARE REPRESENTING AND WARRANTING THAT YOU HAVE AUTHORITY TO ENTER INTO THIS AGREEMENT. THIS PARAGRAPH DOES NOT APPLY WHERE YOU HAVE EXPRESSLY AGREED TO SEPARATE END USER LICENSE TERMS WITH GRAPHIANT EITHER DIRECTLY OR AS PART OF A TRANSACTION WITH AN APPROVED PARTNER.

IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU SHOULD NOT OPEN AN ACCOUNT WITH GRAPHIANT AND IMMEDIATELY AVOID THE USE OF THE SOLUTIONS AND RETURN THEM TO GRAPHIANT.

Graphiant and Customer hereby agree as follows:

1.DEFINITIONS

Capitalized terms used herein shall have the meanings ascribed to them in the body of this Agreement and other documents attached hereto, or as defined below. Terms other than those defined herein shall be given their plain English meaning, and those terms known in the information technology industry shall be interpreted in accordance with their generally known meanings. Unless the context otherwise requires, words importing the singular include the plural and vice-versa.

"Aggregated Data" means the aggregated and statistical data derived from or generated by Your use and the operation of the Graphiant Solutions, to enable and improve features and functionality of the Solutions and to provide Support Services.

"Affiliate" means with respect to a party, any entity which directly or indirectly controls, is controlled by or is under common control with such Party, where "control", "controlled by" or "under common control" means the direct or indirect possession of more than fifty per cent (50%) of the equity of the particular entity type.

"**Appliance" or "Graphiant Appliance"** shall mean the hardware embedded with the Edge Services (defined below) which are licensed together to Customer pursuant to this Agreement. For clarity, the hardware component of the Appliance is licensed to Customer and title remains with Graphiant or its authorized partner, as applicable.

"Authorized User(s)" shall mean any employee, contractor, representative, or other person acting on Customer's behalf who is authorized by Customer to use the Solution and who has been supplied with access to the Solution by either Customer or Graphiant, at Customer's written request.

"Confidential Information" means all proprietary information obtained by a party (the "**Recipient**") from the other party (the "**Discloser**") in connection with this Agreement, orally or in writing, designated as confidential, or that reasonably should be understood to be confidential given the nature of the information and circumstance of disclosure. Confidential Information will not include information that: a) is or becomes generally available to the public other than as a result of its disclosure by the Recipient or its Representatives in breach of this agreement or of any other

undertaking of confidentiality addressed to the party to whom the information relates; or b) was lawfully in the possession of the Recipient before the information was disclosed to it by the Discloser; or c) the parties agree in writing is not confidential or may be disclosed.

"Customer Data" shall mean any information provided by Customer for data processing via Graphiant Solutions, as further defined in Graphiant's Data Processing and Privacy Agreement available at: https://graphiant.com/privacy-policy/

"Cloud Services Provider" means a virtual private cloud infrastructure provider. Cloud Service Providers are third party providers with respect to deployment of the Edge Services on your virtual private cloud infrastructure.

"Documentation" means Graphiant published materials that describe the features and functionality of the Graphiant Solutions that are generally made available to Graphiant end users.

"Edge Services" means Graphiant's network as a service that is provisioned on a Graphiant Appliance or in virtual form for use on your Cloud Service Provider infrastructure or other third-party provider infrastructure and/or hardware appliance.

"Graphiant Cloud" means our cloud hosted software controller that you access via web browser portal to configure and orchestrate the Services.

"Graphiant Content" means any (a) data or content provided by Graphiant to You and (b) Aggregated Data.

"Force Majeure Event" shall mean: (a) fire, flood, earthquake, elements of nature or act of God; (b) riot, civil disorder, rebellion, or revolution; or (c) other matters outside of the reasonable control of Graphiant.

"**Intellectual Property Rights**" or "**IPR**" means all patents, copyrights, moral rights, trademarks, trade secrets and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations for any of the foregoing.

"**Marketplace**" means a Cloud Services Provider marketplace where you procure the Graphiant Solutions (including Metered Use) through your respective Marketplace account(s), including through a Partner, and where such procurement constitutes an Order.

"**Graphiant Service Credits**" means the metered access and use of the Edge Services based on the purchase of pre-paid Service Credits, which are applied towards Edge Services during the Subscription Term. Graphiant Service Credits towards use of Edge Services may be procured through Graphiant's public listing on a Marketplace.

"Order" or "Order Form" shall mean any ordering documents, service order forms, or if the Solution is subscribed through a Partner, then the applicable ordering documents of such Partner, with respect to subscription of the Graphiant Solution, which may include a Marketplace ordering process (e.g. AWS). The term **"Order"** also includes any applicable upgrade or upsell to Graphiant's services.

"Partner" shall mean an authorized distributer, reseller or a managed service provider who is authorized by Graphiant to resell directly or indirectly, or manage the Solution to/for, as applicable, the Customer.

"Software" shall mean (i) the Graphiant proprietary network software as a service, known as the Graphiant Core, (ii) any software and/or services that are delivered to Customer under the Order on behalf of Graphiant or any software underlying the Edge Services that is embedded on the Appliance; (iii) all revisions, corrections, modifications, enhancements, improvements and/or updates and upgrades to the foregoing, and (iv) all related Documentation.

"Solution(s)" or "Graphiant Solutions" shall mean the Software, Cloud Services, Edge Services, the Graphiant Appliance, and the Documentation.

"Subscription Term" shall mean the Initial Subscription Term and all Renewal Subscription Terms (as defined in Section 10.1) together.

"Support Services" means the support and maintenance services that we provide you as part of Graphiant Solutions as may be further described in the Order during the Subscription Term.

2. PROVISION AND LICENSE TO GRAPHIANT SOLUTIONS; RESTRICTIONS ON USE.

2.1 **Provision of Graphiant Offerings.** We will provide you with access to the Graphiant Cloud and Edge Services (respectively), deliver to you Appliance (if applicable), each as set forth on an Order including for Graphiant Service Credits through a Marketplace, along with any applicable Supplemental Terms of Service.

2.2 **License to Graphiant Solution.** You are granted a non-exclusive, non-transferrable, limited right to, during the applicable Subscription Term to access and use the applicable Graphiant Solution for the purposes for which they are provided and only in accordance with the Documentation, and subject to the Scope of Use or other license parameters set forth in the applicable Order.

2.3 **Graphiant Appliance.** Unless expressly approved in writing by Graphiant, you will not (a) remove any software or hardware from, add any software or hardware to, or modify any hardware of, any Graphiant Appliance unit that is provided to you as part of the Graphiant Solution hereunder, or (b) distribute, disclose or otherwise provide any portion of such Graphiant Appliance unit to any third party. Graphiant will retain title to and ownership of any Graphiant Appliance unit that is provided to you as a part of the Graphiant Solution.

2.4 **Restrictions.** You shall not: (i) license, sublicense, resell, rent, lease, transfer, assign, distribute, time-share or otherwise commercially exploit or make the Graphiant Solutions available to any third party,; (ii) use any software probe, scanning device, or similar to attempt to assess the security of the Solutions without our express written permission; (iii) alter, modify or create derivative works of the Graphiant Solutions or Documentation; (iv) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code of the Graphiant Solutions (or any component thereof) for any purpose; (v) send to or transmit over the Graphiant Solution any infringing, inappropriate, unlawful or tortious material or content or any malicious code (vi) access the Graphiant Solutions to build a product or service, or copy any ideas, features, functions or graphics of the Graphiant Solutions, or permit any third party to do the same; (vii) attempt to gain unauthorized access to the Graphiant Solutions or its related systems or networks; (viii) remove or obscure any proprietary or other notices contained in or on any Graphiant Solutions, including any Documentation; (ix) disassemble or attempt to reverse engineer any Graphiant Appliance; (x) remove or erase the Edge Services from any Graphiant Appliance, or otherwise try to disable or alter the Edge Services functionality; (xi) load any other software onto the any Graphiant Appliance; (xii) remove any logo, trademark, or service mark of Graphiant from any Graphiant Appliance; (xiii) publicly disseminate information regarding the performance of the Graphiant Solutions such as benchmarking results.

3.ORDERS

3.1. Your Order will specify the authorized consumption scope of use for the Solution, which includes the Graphiant Service Credits for the service obtained via an authorized partner.

3.2. This Agreement applies whether you subscribe for the Solution directly from Graphiant or through Graphiant's authorized Partners. Graphiant is not bound by any obligations to you other than what Graphiant has explicitly agreed to in this Agreement.

4. USAGE

Usage of Graphiant services is charged on the basis of units of bandwidth ("Service Credits") consumed in the operation of Graphiant solution. During the Subscription Term, Customer cannot exceed Usage beyond the bandwidth consumption ordered in the Order. Should for any reason Customer's needs exceed the scope of consumption credits obtained within the Order, additional credits must be purchased for the remainder of the Subscription Term. Unless the subscription is renewed, should for any reason, the Customer still has credits upon expiry of the service term, the credits will expire and service will be discontinued.

5. CUSTOMER OBLIGATIONS AND LIMITATIONS

5.1. Customer will designate the Authorized Users, including the creation of usernames and passwords for such Authorized Users. Customer is solely responsible for maintaining the status of its Authorized Users and for all the activity of such Authorized Users and their use of the Customer's account. Customer and its Authorized Users will maintain the confidentiality of all usernames, passwords, access, and account information under their control. Except to the extent caused by Graphiant's breach of this Agreement, including its obligations under Section 9 (Confidential Information), Graphiant is not responsible for unauthorized access to the Account. Customer will contact Graphiant promptly if (i) Account information is lost, stolen, or disclosed to an unauthorized person; (ii) Customer reasonably believes that the Account has been compromised, including any unauthorized access, use, or disclosure of account information; or (iii) any other breach of security in relation to its passwords, usernames, access information, or Graphiant's Solution that may have occurred or is reasonably likely to occur.

5.2. Customer shall not (and shall not allow any third party to) (i) place the Solution onto a server so that it is accessible via a public network or use the Solution for timesharing or for service bureau purposes; (ii) ship, transfer, export, or re-export the Solutions or any component thereof or use the Solutions in any manner prohibited by law, including without limitation to, sell, distribute, export or download Solutions in violation of any export or import restrictions, laws or regulations of the U.S. or any foreign agency or authority; (iii) contest Graphiant's Intellectual Property Rights to the Graphiant Solutions; (iv) remove and/or use the Graphiant proprietary software that is installed on or embedded or included in any Graphiant Appliance on any server or hardware other than the Appliance as delivered by Graphiant or its Partner; (v) perform any act or be responsible to any omission that is illegal, including, without limitation, those enforcing censorship, privacy, government authority restrictions, or by accessing any blocked services, or in Graphiant's discretion otherwise jeopardizes, destabilizes, interrupts or encumbers the Solutions and/or Graphiant's network or their servers and/or has a detrimental impact on Graphiant and/or Graphiant's IPR; (vi) transmit or upload any spam, viruses, spyware or other harmful, infringing, obscene, threatening, libelous, illegal, disruptive or destructive content, messages or files, or send or store worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs; (vii) access any Solution and/or its servers through or use with the Solutions any unauthorized means, services or tools, including, without limitation, any data mining, robots, or similar automated means or data gathering and extraction tools, including, without limitation, in order to extract for re-utilization of any parts of the

Solutions; (viii) use the Solution for any purpose other than as permitted by this Agreement, including all Orders; (ix) move the Appliance to another physical location without prior consent with us; (x) directly or indirectly conduct any penetration testing (including to users' systems, network and/or servers) through or using the Solutions and/or their respective connectivity or networks, unless (a) Customer performs such testing to their own systems and applications through no use of the Solution; (b) Customer notifies Graphiant about it 30 days in advance and in writing; and (c) it is done solely as part of its legal and obligatory auditing processes to assure the operation of the Solution, or for its internal security verification requirements.

Whether Customer has violated any of the limitations set forth in this Section 5.2 shall reside within Graphiant's sole discretion. If Graphiant determines a violation has occurred, Graphiant shall notify Customer of the violation and Customer shall be required to cease the violation immediately. Graphiant may also determine in its sole discretion whether to suspend or block the Customer's access to Graphiant Solutions. Graphiant shall use such remedy when such violation represents an imminent threat to Graphiant's network or if directed by a court of competent authority. In such cases Graphiant will: (i) suspend the Customer's account only to the extent reasonably necessary to prevent any harm to Graphiant's Network; (ii) use its reasonable efforts to promptly contact Customer and give Customer the opportunity to promptly change the configuration of its server(s) accordingly and/or work with Customer to promptly resolve the issues causing the suspension of the Account; and (iii) reinstate any suspended part of the Account immediately after any issue as above-mentioned has been resolved, provided if Graphiant determines that any such violation was willful or is unable to be adequately remedied, it may immediately terminate this Agreement and/or any impacted Order without penalty upon notice to Customer.

5.3. Customer is solely responsible for acquiring and maintaining all the hardware, software, and services necessary to access and make use of the Solutions, including paying all fees and other costs related to internet access. Customer shall use the Solutions in accordance with the Graphiant's Solution documentation made available and/or provided by Graphiant, and as may be updated from time to time, and in compliance with the applicable operating instructions and all applicable laws and regulations and for no purpose other than as specifically authorized in the Solution documentation, including without limitation, Customer shall not use the Solution for the purpose of circumvention of government censorship, laws or regulations.

5.4. Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. Customer will enable and permit Graphiant (and/or its third-party contractors) to process Customer Data, which includes network traffic, traffic data and URL(s), IP address(es) used in connection therewith to support the Services, all in accordance with Graphiant's Privacy Policy located at: https://graphiant.com/privacy-policy/ (the "Privacy Policy").

5.5. Customer will comply with all applicable privacy laws and regulations (including all registration and notice requirements), inclusive of the Graphiant Data Processing Agreement and the Privacy Policy; and Customer will obtain all applicable consents required by law for data processing by Graphiant of personal information submitted by Customer, if any.

6. INTELLECTUAL PROPERTY RIGHTS.

6.1. **Graphiant.** Graphiant Solutions, and all improvements, enhancements, and derivatives thereof and all Intellectual Property Rights thereto are exclusively owned by Graphiant and/or its licensors. Your rights to use the Graphiant Solutions are limited to those expressly granted in this Agreement and any applicable Order. No other rights with respect to Graphiant Solutions or any related intellectual property rights are implied. Graphiant reserves all rights not expressly granted to You and does not transfer any ownership rights in any Solution. Without limiting the

confidentiality obligations set forth in this Agreement, Graphiant retains all right, title and interest in the Graphiant Content. Nothing herein shall be construed as prohibiting Graphiant from utilizing the Graphiant Content for purposes of operating Graphiant's business, provided that the Graphiant Content does not include Your Confidential Information, Customer Data or any information that personally identifies a specific individual.

6.2. **Customer.** Customer Confidential Information, Customer trademarks, and other Customer proprietary information, including all Customer Data, shall be the sole property of Customer, and Graphiant shall only have such rights to use such information as expressly provided in this Agreement and to provide the Graphiant Solution.

6.2. **Feedback**. Your feedback regarding the Solutions, your use or any suggested improvements, enhancements, or derivatives (**"Feedback"**) is welcomed by Graphiant. You are not required to provide Feedback, however, to the extent that you do so, such Feedback shall not constitute your Confidential Information and you acknowledges that Graphiant may use such Feedback in any manner Graphiant sees fit, without payment of royalty or any other consideration.

7. PAYMENT AND TAXES

7.1 Fees and Payment: All fees and other charges in connection with the Graphiant Solutions shall be as set forth on the applicable Order Form. Except as expressly set forth in this Agreement, all payment obligations are non-cancelable and Fees are non-refundable. If Customer issues a purchase order upon entering into an Order Form, then: (i) any such purchase order submitted by Customer is for its internal purposes only, and Graphiant rejects, and in the future is deemed to have rejected, any purchase order terms to the extent they add to or conflict in any way with this Agreement or the applicable Order Form and such additional or conflicting terms will have no effect; (ii) it shall be without limitation to Graphiant's right to collect Fees owing hereunder; (iii) it shall be for the total Fees owing under the applicable Order Form; and (iv) on request, Graphiant will reference the purchase order number on its invoices (solely for administrative convenience), so long as Customer provides the purchase order reasonably in advance of the invoice date. Graphiant will invoice Customer using the billing contact information set forth in the applicable Order Form.

8. SUPPORT SERVICES AND SERVICE LEVELS.

Graphiant's Support Services and service level agreement for the Graphiant Cloud and Edge Services (**"SLA"**) can be found at support.graphiant.com.

A. Graphiant shall ensure services are Available to meet a Service Level Agreement of higher than 99.99% availability. Failure to make the Service Available at least 99.99% of the time in any given calendar month during the Term shall be deemed a service level default ("Service Level Default"). For purposes of this Schedule, "Available" means that able to access all features and functions of the Service including, but not limited to the network features described in the Documentation. The parties agree that the Service shall be deemed: (i) Available during "Scheduled Maintenance" (as defined below); and (ii) not Available during: (a) "Emergency Maintenance" (as defined below), and (b) a "Problem Severity Level 1" (as defined below).

Service Level (Monthly)	Service Level Credit (Percentage of Fee Prorated Monthly)
At or above 99.99%	0
99.98-99.9%	2%
99.89-97.99%	5%
97.99 – 96%	10%
95.99 – 94%	25%
93.99 – 92%	50%
Below 92%	100%

B. Any problems or issues ("Problems") related to the Service shall be subject to resolution per the table below.

Problem Severity Level	Acknow-ledge (1)	Efforts (2)	Updates (3)	Resolution (4)
1: Critical application, service or function is not available or operating in a materially degraded manner.	15 mins	24x7 365	Every 1 hour	1 hour
2: Critical application, service or function is not available or operating in a materially degraded manner but a work around exists, or a non-critical application, service or function is not available or operating in a materially degraded manner and no work around exists.	1 hour	24x7 365	Every 2 hours	4 hours
3: Non-critical application, service or function is not available or operating in a materially degraded manner but a work around exists.	4 hours	During Business Hours	Every 24 hours	72 hours

If a Problem Severity Level 1 or 2 is not resolved by the time identified in the Resolution column above, Graphiant shall promptly contact to provide an explanation as to why the Problem is not resolved and what steps are being taken to resolve the Problem as soon as possible.

C. SCHEDULED AND EMERGENCY MAINTENANCE AND NOTIFICATIONS

a. "Scheduled Maintenance:"

Every Alternate Saturday of the month from 12pm ET to 5pm ET.

b. "Emergency Maintenance:" Graphiant will notify Company of any maintenance outside the Scheduled Maintenance outlined above which may cause the Subscription Services to be not Available as soon as reasonably practicable.

9. CONFIDENTIAL INFORMATION

9.1. The Recipient agrees and acknowledges that all Confidential Information it obtains from the Discloser constitutes the confidential property of the Discloser if it is identified as confidential at the time of disclosure or should be reasonably known by the Recipient to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. The Graphiant Solutions, pricing, technical information and other code, data, business, or financial information of any type (including, without limitation, Graphiant's plans for new or enhanced products and services) provided by Graphiant will be deemed trade secret and Confidential Information of Graphiant without any marking or further designation.

9.2. The Recipient may use or make copies of the Confidential Information of the Discloser only to the extent reasonably necessary for purposes of this Agreement. The sharing of Confidential Information hereunder shall be "as is" without warranty and conveys to the Recipient no rights in or to such Confidential Information. The Receiving Party will protect the confidentiality of the Discloser's Confidential Information in the same manner that it protects the confidentiality of its own similar information, but in no event using less than a reasonable standard of care. The Recipient will restrict access in the Confidential Information to those of its personnel (including such personnel employed by its Affiliates, contractors, agents and legal and financial professionals) and subcontractors engaged in the performance,

management, receipt or use of the Solution under this Agreement, or otherwise necessary in connection with its performance of all obligations under this Agreement, provided that such parties are bound by obligations of confidentiality at least as restrictive as the terms of this Agreement.

9.3. Notwithstanding the above provisions of this Section 9, a party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permissible to do so if:

9.3.1. it gives the other party as much notice in writing of this disclosure as possible;
9.3.2. to the extent required to disclose, discloses only that portion of the Confidential Information legally required; and
9.3.3. where notice of disclosure is not prohibited by law, and is given in accordance with this Section 9, it provides reasonable cooperation upon the Discloser's request in either disputing the request or seeking an appropriate protective order, or similar relief, to the protect the disclosure of such Confidential Information.

9.4. Recipient will return or destroy the Discloser's Confidential Information in its possession upon request by the Discloser, and upon the expiration or other termination of this Agreement, provided the Recipient may retain the Confidential Information of the Discloser by agreement or if required under applicable law. Each party may retain copies of the other party's Confidential Information required for compliance with its recordkeeping or quality assurance requirements (subject to the terms of this Agreement and all confidentiality requirements herein for the length of such retention).

9.5. The Recipient acknowledges that disclosure of Confidential Information would cause substantial harm to the Discloser that could not be remedied by the payment of damages alone and therefore that upon any such disclosure by the Recipient will be entitled to appropriate equitable relief in addition to whatever remedies it might have at law.

10. TERM AND TERMINATION.

10.1. **Term**. The initial term of Your subscription to the Graphiant Solutions will begin on the start date set forth in an Order and will continue for a minimum period of twelve (12) months, or as otherwise set forth in an Order ("**Initial Subscription Term**"). Unless stated otherwise in an Order, your subscription to the Graphiant Solutions will automatically renew for additional, successive subscription terms of twelve (12) months (each a "**Renewal Subscription Term**") at Graphiant's then-current price for the Graphiant Solutions, unless terminated by either party upon thirty (30) days written notice of non-renewal prior to the expiration of the then-current subscription term. This Agreement will expire or terminate upon the expiration or termination of all Subscription Terms pursuant to an Order hereunder.

10.2. **Co-Term**. Should any Orders be submitted by Customer for additional Solutions or additional Scope of Use (an "**Additional Order**"), within the same country, during any existing Subscription Term or Renewal Subscription Term, the initial Subscription Term of such Additional Order shall be pro-rated to concur with the existing Subscription Term or Renewal Subscription Term so that the termination of all current Subscription Terms and all subsequent renewal Subscription Terms shall coincide to take effect on the same date. Applicable fees shall be pro-rated in accordance with any pro-rated Subscription Term or renewal Subscription Term.

10.3. **Termination**.

10.3.1 **By Customer.** Customer may terminate this Agreement upon thirty (30) days prior written notice to Graphiant if Graphiant is in material breach of the Agreement and fails to cure the breach within the said notice period, in which

case Customer will be entitled to receive a pro-rata refund of all pre-paid fees attributable to any period post termination, if any, as Customer's sole and exclusive remedy.

10.3.2 **By Graphiant.** Graphiant may terminate this Agreement upon thirty (30) days prior written notice to Customer if Customer is in material breach of the Agreement and fails to cure the breach within the said notice period, subject to the foregoing. Graphiant may terminate the Agreement with written notice: (i) upon Customer's failure to comply with its obligations under Section 5; (ii) if Customer attempts to transfer or assign any of its rights, liabilities or obligations under this Agreement contrary to the provisions of this Agreement; (iii) non-payment of the applicable fees to Graphiant after a delay of more than seven (7) days ; (iv) Graphiant reasonably believes it is necessary to do so to comply with any law or an order, instruction or request of government, emergency services or other competent authority; or (v) a Force Majeure Event occurs which materially affects Graphiant's ability to provide the Service.

10.4. **Effects of Termination.** Upon termination or expiration of this Agreement Customer shall cease use of the Solutions, and return Appliances, where applicable, and immediately return to Graphiant all Confidential Information and Graphiant IPR in any media and shall, to the extent applicable, erase all copies of the Service. Notwithstanding the termination or expiration of this Agreement, Customer shall pay for all of its use of the Graphiant solution and Sections 2.4, 6, 9, 10.4, 11, 13, and 14 shall survive and remain in effect in perpetuity.

11. LIMITATIONS OF LIABILITY

11.1 **Limits on Liability.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR: (I) ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT OR UNDER ANY THEORY OF LIABILITY, WHETHER OR NOT SUCH PARTY OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (II) CUMULATIVE AMOUNTS IN EXCESS OF THE FEES PAID BY YOU FOR THE GRAPHIANT SOLUTION DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE FIRST EVENT OR OCCURRENCE GIVING RISE TO SUCH LIABILITY.

11.2 **Exclusions.** THE FOREGOING LIMITATIONS ON LIABILITY UNDER 11.1 WILL NOT APPLY TO EITHER PARTY'S BREACH OF SECTION 8 (CONFIDENTIALITY), OR YOUR BREACH OF YOUR PAYMENT OBLIGATIONS OR ANY LICENSE OR USE RESPONSIBILITIES OR RESTRICTIONS. FOR THE AVOIDANCE OF ANY DOUBT, UNDER NO CIRCUMSTANCES WILL WE HAVE ANY LIABILITY TO YOU FOR COST OF PROCUREMENT OF REPLACEMENT OR SUBSTITUTE THIRD PARTY-PROVIDER PRODUCTS OR SERVICES. NOTWITHSTANDING THE FOREGOING OR ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR AN ORDER, IF CUSTOMER HAS PURCHASED THE GRAPHIANT SOLUTION THROUGH A PARTNER, CUSTOMER SHALL LOOK EXCLUSIVELY TO THE PARTNER FOR ANY RELIEF RELATING TO THE SERVICES OR VIOLATION OR BREACH OF THIS AGREEMENT.

12. WARRANTIES.

12.1 **Mutual Warranties.** Each Party represents and warrants to the other Party that it has the power and authority to execute, deliver, and perform its obligations under this Agreement.

12.2 **Graphiant Warranties.** We warrant to you that the Graphiant Solution will operate in conformity in all material respects with the applicable Documentation. Your sole and exclusive remedy, and our sole liability, for any breach of this warranty shall be for us to, at our expense: (i) repair the nonconforming Solution such that it conforms to the Documentation; or (ii) replace the non-conforming Solution with an equivalent product that conforms to the Documentation. The limited warranty in this Section 12.2 shall not apply a) unless you notify us in writing of a breach of this warranty and or b) if the error or failure in performance was caused by misuse, unauthorized modifications, third-party provider hardware, software or services, or Customer Data.

12.3 **Customer Warranties.** You represent and warrant that: (i) your use of the Graphiant Solution and all Customer Data is at all times compliant with your privacy policies and all applicable laws and regulations; and (ii) you have sufficient rights in the Customer Data to grant the rights granted to us herein and that the Customer Data does not infringe or otherwise violate the rights of any third party. If you export Customer Data from one jurisdiction to another jurisdiction, you will ensure that you have all legal rights to do so including, without limitation, in compliance with all applicable data protection laws.

12.4 DISCLAIMER OF WARRANTY. EXCEPT AS EXPRESSELY PROVIDED HEREIN, GRAPHIANT MAKES NO WARRANTY REGARDING THE SOLUTION AND HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, INFORMATIONAL CONTENT, SYSTEMS INTEGRATION, INTERFERENCE WITH ENJOYMENT OR OTHERWISE. GRAPHIANT DOES NOT WARRANT THAT (I) THE SOLUTION WILL BE UNINTERRUPTED OR ERROR-FREE, OR (II) THE SOLUTION WILL PERFORM IN ACCORDANCE WITH CUSTOMER'S EXPECTATIONS OR ACHIEVE CUSTOMER'S DESIRED RESULT. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN CONNECTION WITH ITS USE OF THE SOLUTION HEREUNDER SHALL BE THOSE REMEDIES SET FORTH IN THE SLA.

13. INDEMNIFICATION

13.1 Graphiant Indemnity. We shall defend, indemnify and hold harmless to you from and against any and all third-party claims asserted against you and all resulting, to the extent payable to unaffiliated third parties, damages, losses, liabilities, penalties, costs and expenses, including reasonable attorneys' fees and costs ("**Losses**") arising out of the alleged infringement or misappropriation of a copyright, trade secret, trademark or patent by the Graphiant Solutions. If any claim which we are obligated to defend has occurred, or in our determination is likely to occur, we may, in our sole discretion and at our option and expense: (a) obtain for you the right to use the allegedly infringing item; (b) substitute a non-infringing replacement for such item; or (c) if in our opinion neither item (a) nor (b) are reasonably available, terminate the Agreement and refund to you the Fees paid by you in an amount pro-rated for the portion of the Subscription Term for the Graphiant Solutions which was paid by you but not rendered by us. Our indemnification obligation herein shall not apply if such claim arises out of: (a) the use of the Graphiant Solutions in combination with any software, hardware, network or system not supplied by us where the alleged infringement is caused by such combination; (b) any modification or alteration of the Graphiant Solutions other than by us; (c) your continued allegedly infringing activity after being informed of a modification that would avoid the alleged infringement; or (d) the use of the Graphiant Solutions other than in accordance with the terms and conditions of this Agreement including the Documentation. THIS SECTION 13.1 SETS FORTH OUR SOLE LIABILITY, AND YOUR SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION RELATED TO THE GRAPHIANT SOLUTIONS.

13.2 Customer Indemnity. You shall indemnify, defend and hold harmless to us from and against any and all Losses arising out of (i) any Customer Data including, without limitation, the violation of any laws, regulations or privacy rights, (ii) your use of the Graphiant Offerings, or (iii) any bodily injury or death to any person, or any property damage to tangible property, related to or arising from your business or operations.

13.3 Procedure. The Indemnifying Party's indemnification obligation is subject to the Indemnifying Party receiving (i) prompt written notice from the Indemnified Party of such claim, but in any event, notice in sufficient time for the Indemnifying Party to respond without prejudice; (ii) the exclusive right to control and direct the investigation, defense, or settlement of such claim; and (iii) all reasonable necessary cooperation of the Indemnified Party at Indemnifying Party's expense.

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1940 Zanker Road Suite 50
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14. GENERAL.

14.1. **Entire Agreement, Additional Terms, Amendment.** This Agreement represents the complete agreement concerning the Graphiant Solutions between the parties and prevails over any additional or inconsistent terms in: (a) a purchase order (or similar document) provided by You; or (b) your agreement with a Partner. This Agreement supersedes all prior agreements and representations, written or oral, provided however, that if there is already a mutually signed agreement directly between You and Graphiant (not including a purchase order or similar document) covering your license and/or use of the Graphiant Solutions, then the terms of that agreement will govern. This Agreement may be amended only by a written document executed by a duly authorized representative of each of the parties. The terms and conditions of this MSA shall apply to all Order Form(s), orders and any additional or inconsistent terms appearing on purchase orders generated by Customer, if applicable, are not incorporated into this Agreement and are not otherwise binding on Graphiant. In the event of a conflict between any Order and this Agreement, the Order will control solely with respect to the conflicting term.

14.2. **Force Majeure**. Neither Party shall be liable to the other Party for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events which occur which are beyond the reasonable control of such Party ("Force Majeure Event"), such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency. Any Party claiming a Force Majeure Event hereunder shall provide prompt notice thereof to the other Party and make commercially reasonable efforts to overcome the effect of such Force Majeure Event. If such Force Majeure Event prevents the Party from substantially performing its obligations hereunder for a period of thirty (30) days or more, either Party may terminate this Agreement on five (5) days written notice.

14.3. **Assignment**. Neither party may assign this Agreement or any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement without consent to: (a) an Affiliate; or (b) in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all its assets (except for an assignment by You to a direct competitor of Graphiant). Any unauthorized assignment will be void and of no force or effect. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

14.4. **Validity**. In case any provision of this Agreement shall be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

14.5. **Exercise of Rights**. No failure or delay on the part of Graphiant hereto in exercising any right, power or remedy shall operate as a waiver thereof, any waiver granted by Graphiant, hereunder must be explicit and in writing and shall be valid only in the specific instance in which given.

14.6. **Notices**. Any notice hereunder will be in writing to the notice address set forth in the Order Form: (i) upon receipt if by personal delivery; (ii) upon receipt if sent by certified or registered mail (return receipt requested); (iii) two (2) days after it is sent if by overnight delivery by a major commercial delivery service; or (iv) upon written confirmation of receipt by the receiving party if sent by email. Either party may, by similar notice described herein, specify, or change an address to which notices and communications shall thereafter be sent.

14.7. **Export Controls.**
You will comply fully with applicable United States government and any other country's export and re-export laws, regulations, and requirements. You may not export or re-export any Solution that may be subject to such laws,

regulations, and requirements, to any location, or for any use, without first obtaining any export license, permit or other approval that may be required. Without limiting the foregoing, (i) You shall not export or re-export any Solution subject to export control laws to any person who is listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country, (ii) You shall not resell, access, or use the Solutions in violation of any U.S. export embargo, prohibition or restriction or for any end-use related to the development, production or use of nuclear, chemical or biological weapons or missiles. Graphiant's obligations hereunder shall at all times be subject to the export control laws and regulations of the United States government and any amendments thereof. "

14.8. **Compliance with Laws.** Each party will comply with all laws and regulations applicable to its obligations under this Agreement.

14.9. **Government Users.** If you are a branch or agency of the United States Government, the Graphiant Solutions and any other services provided by Graphiant hereunder, are comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 49 C.F.R. 12.212, and are provided to you either (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212 or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3.

14.10. **Independent Contractors.** The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency created hereby between the Parties. Neither Party will have the power to bind the other or incur obligations on the other Party's behalf without the other Party's prior written consent.

14.11. **Governing law; Venue.** This Agreement shall be governed by the laws of the United States of America and the State of California, excluding its conflict of laws rules. The United Nations Convention on the International Sale of Goods and the Uniform Computer Information Transactions Act are specifically excluded from application to this Agreement. The Parties hereby submit to the exclusive jurisdiction of, and waive any venue jurisdiction or venue objections against, the state and Federal courts located in Santa Clara County, California.