

IGRAF X CLOUD SERVICES AGREEMENT

THIS CLOUD SERVICES AGREEMENT (“AGREEMENT”) IS A LEGAL AGREEMENT BETWEEN YOU AND IGRAF X THAT GOVERNS YOUR ACQUISITION, ACCESS, AND USE OF IGRAF X’S CLOUD SERVICES. THIS AGREEMENT IS ENTERED INTO EFFECTIVE AS OF THE DATE ON WHICH YOU ACCEPT THE AGREEMENT. BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE, EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT OR BY ACCESSING OR USING THE CLOUD SERVICES YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH COMPANY OR ENTITY AND ITS AFFILIATES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU ARE A COMPETITOR OF IGRAF X OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

1. Definitions.

- a. “**Authorized Users**” means Your and Your Affiliates’ employees and independent contractors who are authorized by You to use the Cloud Services and Documentation in accordance with the Agreement, for whom subscriptions to Cloud Services have been ordered, and who have been notified of the obligations and restrictions of this Agreement and supplied with Authorized User identifications and passwords by You or by iGraf x at Your request.
- b. “**Cloud Services**” means the online, hosted version of iGraf x’s software product(s) described in the relevant Order Form, as modified from time to time by iGraf x, that iGraf x makes available at a designated customer log-in link subject to this Agreement during the Subscription Term.
- c. “**Documentation**” means the online documentation for the Cloud Services as updated from time to time by iGraf x.
- d. “**iGraf x**” means iGraf x, LLC.
- e. “**iGraf x Affiliate**” means any legal entity which directly or indirectly owns or controls, is controlled by, or is under common control with iGraf x.
- f. “**Malicious Code**” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.
- g. “**Non-iGraf x Products**” means any applications, products and software not owned by iGraf x that interoperate with the Cloud Services. This includes any applications, products and software provided by You.
- h. “**Order Form**” means an iGraf x-provided document including a sales quotation or proposal used to place orders under this Agreement, including iGraf x’s addenda to the Order Form, that is executed from time to time between iGraf x and You for the purchase of Cloud Services.
- i. “**Party**” means either iGraf x or You individually. Collectively, iGraf x and You may be referred to as the “Parties”.
- j. “**Subscription Term**” means the period beginning on the date You purchased the relevant Authorized User subscription(s) for Cloud Services and ending thirty-six (36) months thereafter unless another period is stated by iGraf x in the relevant Order Form.
- k. “**Technical Support**” means technical support services, dependent on the technical support services level purchased by You, provided by iGraf x.
- l. “**You**” or “**Your**” means the company or other legal entity for which you are accepting this Agreement.
- m. “**Your Affiliate**” means any legal entity which You directly or indirectly own or control greater than fifty percent (50%) of such entity’s shares or control the board of such entity by force of law or contract.
- n. “**Your Data**” means all electronic data or information that You submit to the Cloud Services.

2. **Cloud Services Obligations.**

- 2.1 During the applicable Subscription Term, iGraf x will provide Cloud Services to You in accordance to this Agreement and the relevant Order Form either directly or through a third-party services provider.
- 2.2 Contingent on Your full compliance with the terms and conditions of the Agreement and the applicable Order Form, iGraf x

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grants You a non-exclusive, non-transferable, limited, revocable right to allow Authorized Users to access and use the Cloud Services during the applicable Subscription Term for the Cloud Services specified in the relevant Order Form solely for Your internal business use. Use of the Cloud Services is purchased as Authorized User subscriptions and Cloud Services may be accessed by no more than the specific number of Authorized Users set forth in the relevant Order Form. Additional Authorized User subscriptions may be purchased during the applicable Subscription Term, prorated for the remainder of the Subscription Term in effect at the time the additional User subscriptions are purchased, and the added Authorized User subscriptions shall terminate on the same date as the pre-existing subscriptions. An Authorized User subscription is only for the designated Authorized User and cannot be accessed, shared or used by more than one Authorized User. A new Authorized User may replace former Authorized User who no longer requires access to or use of the Cloud Services. An Authorized User subscription may not be transferred between Authorized Users more frequently than every thirty (30) days.

- 2.3 Except as otherwise stated in the applicable Order Form, all Authorized User subscriptions shall automatically renew for additional periods equal to the expiring Subscription Term, unless either Party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant Subscription Term.
- 2.4 At the end of a Subscription Term, iGraf x may with notice prior to any renewal, replace the Cloud Services specified in an Order Form with replacement underlying software that is generally available to customers and which has alternative, materially similar, functionality.
- 2.5 All rights not expressly granted herein are reserved by iGraf x.

3. Use of the Cloud Services

- 3.1 **iGraf x's Responsibilities.** iGraf x will: (i) use commercially reasonable efforts to make the Cloud Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which iGraf x shall give at least 8 hours' notice and which iGraf x shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday Pacific Time), or (b) any Force Majeure event, (ii) provide the Cloud Services in accordance with applicable laws and government regulations; and (iii) if You have purchased a current Technical Support plan for the Cloud Services, provide Technical Support pursuant to the relevant plan.
- 3.2 **Data Protection.** iGraf x has taken reasonable measures to protect and secure Your Data but does not guarantee the security of Your Data and will not be liable in any way for any unauthorized access or loss of Your Data. iGraf x shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law in accordance with Section 8.3 or as expressly permitted in writing by You, or (c) access Your Data except to provide the Cloud Services and prevent or address service or technical problems, or at Your request in connection with customer support matters.
- 3.3 **Your Responsibilities and Restrictions.**
 - a. You shall be solely responsible for acquiring and maintaining all communication services and equipment necessary for You to access and use the Cloud Services, including but not limited to network equipment, broadband internet access, computer hardware and software and other equipment and services that are compatible with the Cloud Services. iGraf x reserves the right at any time and for any reason to modify the equipment, performance specifications or other services required to access or use the Cloud Services without liability to iGraf x for any cost to You as a result of such modification and You are responsible for making the necessary modifications in services and equipment necessary for Your access and use the Cloud Services.
 - b. You shall be responsible for Your and Authorized Users' compliance with this Agreement and all activities that occur in or are related to the Authorized User subscriptions.
 - c. You shall be responsible for the accuracy, appropriateness, integrity, quality, reliability, and legality of Your Data and of the means by which You acquired Your Data.
 - d. You shall prevent unauthorized access to or use of the Cloud Services, and notify iGraf x promptly of any such unauthorized access or use.
 - e. You and Your Authorized Users shall use the Cloud Services only in accordance with the Agreement, Documentation and applicable laws and government regulations.
 - f. You shall not, nor shall any Authorized Users, (i) make the Cloud Services available to anyone other than Authorized Users, (ii) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, or time share the Cloud Services or use the Cloud Services to provide service bureau or hosted services or otherwise commercially exploit the Cloud Services, (iii) use the Cloud Services to store or transmit material that is infringing, libelous, obscene, threatening or otherwise unlawful or tortious or that violates third party privacy rights, (iv) use the Cloud Services to store or transmit Malicious Code, (v) interfere with or disrupt the integrity or performance of the Cloud Services or third party data contained therein, (vi) attempt to gain

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unauthorized access to the Cloud Services or their related systems or networks or to the accounts of any iGraf x customer, (vii) copy the Cloud Services or any design, features, functionality or graphics contained in the Cloud Services, (viii) alter, modify, or create derivative works of the Cloud Services or Documentation, (ix) reverse engineer, disassemble, or decompile the Cloud Services or use any other method or process to access or derive the source code of the Cloud Services. The license and rights granted to You in the Agreement are contingent upon the continuing compliance of You and Your Authorized Users with the terms and conditions of the Agreement.

- g. The Cloud Services, Documentation, and derivatives thereof are subject to export laws and regulations of the United States and other countries. You shall not allow Authorized Users to access or use Cloud Services in a U.S. embargoed country or in violation of any local or U.S. export law or regulations. You and Your Authorized Users shall comply with (i) applicable export laws and regulations of any agency of the U.S. Government; (ii) the United States Foreign Corrupt Practices Act and (iii) any other current applicable laws, regulations and other legal requirements in its licensing and use of the Cloud Services hereunder. In particular, all Authorized Users certify by their access or use of the Cloud Services that: (a) they are not a citizen, national or resident of, and are not under the control of, the government of: Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria, Serbia, Taliban-controlled areas of Afghanistan, nor any other country to which the United States has prohibited export; (b) they will not download or otherwise export or re-export the Cloud Services, directly or indirectly, to the countries mentioned in clause (a) nor to citizens, nationals or residents of those countries; (c) they are not listed in the United States Department of Treasury lists of Specially Designated Nationals, Specially Designated Terrorists, and Specially designated Narcotic Traffickers, nor are they listed on the United States Department of Commerce Table of Denial Orders; (d) they will not provide access to or otherwise export or re-export the Cloud Services or related technology, directly or indirectly, to persons on the lists mentioned in clause (c); and (d) they will not access or use the Cloud Services for, and will not allow the Cloud Services to be used for any purposes prohibited by United States law, including, without limitation, for the development, design, manufacture or production of nuclear, chemical or biological weapons of mass destruction.
- h. The Cloud Services are not fault tolerant and are not designed or intended for use in any situation where failure or fault of any kind of the Cloud Services could lead to death or serious bodily injury of any person, or to severe physical or environmental damage (“High Risk Use”). You and the Authorized Users are not authorized or licensed to use the Cloud Services for use in, or in conjunction with High Risk Use.
- i. You shall have no right to receive object code or source code copies of any of the iGraf x software products that are part of the Cloud Services.

3.4 Additional Usage Limitations. The Cloud Services may be subject to other limitations which will be specified in the Documentation or the Order Form.

4. Non-iGraf x Providers.

4.1 Non-iGraf x Products and Third-Party Services. iGraf x may make available to You third party services or Non-iGraf x Applications for Your convenience. Any acquisition or purchase by You of such Non-iGraf x Applications or third-party services, and any exchange of data between You and any third-party provider, is solely between You and the applicable third-party provider. iGraf x does not warrant or support Non-iGraf x Products or services, whether or not they are made available by iGraf x. Subject to Section 4.2 (Integration with Non-iGraf x Services), no purchase of Non-iGraf x products or third-party services is required to use the Cloud Services except a supported computing device, operating system, web browser and Internet connection. You agree that You and Your Authorized Users shall use such Non-iGraf x Products and third party services in your sole discretion and at your sole risk and iGraf x shall have no responsibility or liability with respect to such Non-iGraf x Products or third party services used by You or Your Authorized Users or for any act or omission of such third party provider. If You enable, install or link to Non-iGraf x Products for use with Cloud Services, You acknowledge that iGraf x may allow providers of those Non-iGraf x Products to access Your Data as required for the interoperation of such Non-iGraf x Products with the Cloud Services. iGraf x shall not be responsible or liable for any disclosure, modification or deletion of Your Data resulting from any such access by Non-iGraf x Application providers or that results from Your use of Non-iGraf x Products.

4.2 Integrations with Non-iGraf x Products or Third Party Services. The Cloud Services may contain features designed to interoperate with Non-iGraf x Products or third-party services. To use such features, You may be required to obtain access to such Non-iGraf x Products or third party services from their providers. If the provider of any such Non-iGraf x Products or third-party services ceases to make the Non-iGraf x Products or third-party services available for interoperation with the corresponding Cloud Services features on terms acceptable to iGraf x, iGraf x may cease providing such Cloud Services features without entitling You to any notice, refund, credit, or other compensation.

5. Proprietary Rights.

5.1 Ownership/Proprietary Rights. iGraf x and its licensors shall retain all right, title, copyright, patent, trademark, trade secret

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and all other proprietary interests to the iGrafx software, the Cloud Services and to all iGrafx intellectual property and any enhancements, modifications or derivatives thereof. You may not distribute, promote, or otherwise use any information or materials relating to the iGrafx software or the Cloud Services for any external use without the express prior written consent of iGrafx or as otherwise specifically permitted herein. No title, copyright, patent, trademark, trade secret or other right of intellectual property not expressly granted hereunder is exchanged between the parties.

- 5.2 **Restrictions.** You shall not (i) permit any third party to access the Cloud Services except as permitted herein, (ii) modify or copy the Cloud Services or create derivative works based on the Cloud Services, (iii) frame or mirror any part or content of the Cloud Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes in accordance with the Agreement, (iv) reverse engineer the Cloud Services, or (v) access or use the Cloud Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Cloud Services.
- 5.3 **Your Data.** You grant iGrafx, its affiliates and relevant contractors a worldwide license to host, transmit and display Your Data as reasonably necessary to provide the Cloud Services. Subject to the limited rights granted by You hereunder, iGrafx acquires no right, title or interest from You or Your licensors under this Agreement in or to Your Data, including any intellectual property rights therein.
- 5.4 **Feedback/Suggestions/Satisfaction Survey.** You hereby grant iGrafx a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Cloud Services any suggestions, enhancement requests, recommendations or other feedback (“Feedback”) provided by You, including Authorized Users, relating to the operation of the Cloud Services. iGrafx has no obligation to implement any such Feedback. From time to time, iGrafx may contact You and Your Authorized Users, either via the Cloud Services System or by email provided by You and Your Authorized Users to measure customer satisfaction with the Cloud Services and Technical Support. All customer satisfaction data collected by iGrafx from You and Your Authorized Users is exclusively owned by iGrafx and can be used for any purpose however if such customer satisfaction data is going to be used publicly, it will be anonymized and aggregated before public release.
- 5.5 **Government End Use Provision.** iGrafx provides the Cloud Services, included related software and technology, for U.S. government end use solely in accordance with the following: Government technical data and software rights related to the Cloud Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with iGrafx to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.
6. **Technical Support.** Cloud Services do not include any Technical Support. iGrafx offers Basic and Superior Technical Support for purchase as detailed in this Section. Technical Support may be further described at www.igrafx.com and may be changed from time to time at iGrafx’s sole discretion. Technical Support does not include onsite support or support for third party software, extensions created by the Customer or by iGrafx, or professional services including but not limited to installation, configuration, deployment, implementation, consulting, training and other professional services related to the Software.

(a) **Basic Technical Support.** If You have purchased Basic Technical Support for the relevant Subscription Term, You will receive:

(i) free-of-charge access to electronic web-based self-help (i.e. Knowledge Base and other online tools), and

(ii) access to Technical Support by completing a Bug or Problem report form using iGrafx’ s online Service Desk. iGrafx will address requests on a reasonable efforts basis only and may not be able to resolve all problems or requests. iGrafx will provide Basic Technical Support for the Software only if it is used under appropriate operating conditions, and in conjunction with hardware systems, components and software operating systems for which it was designed; and,

(iii) Basic Technical Support is only available in selected countries and languages as specified by iGrafx. In North America, Basic Technical Support hours are Monday – Friday, 10:00 AM to 4:00 PM ET (Eastern Time) excluding iGrafx holidays. In Europe, Basic Technical Support hours are Monday – Friday, 10:00 AM to 4:00 PM CET (Central European time) excluding iGrafx holidays. Additional geographies may be covered by iGrafx or iGrafx authorized partners in their respective locations.

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(b) Superior Technical Support. If You have purchased Superior Technical Support, You will receive Superior Technical Support which includes:

(i) Basic Technical Support benefits set forth in Section 6 (a)(i) above.

(ii) You shall have the right to log support incidents via iGraf x's online Service Desk or by calling the iGraf x support line, and iGraf x will respond, on a reasonable efforts basis, within the relevant response times indicated for the service level shown in the chart set forth in Exhibit A. iGraf x will respond to reported support incidents on a reasonable commercial efforts basis. You shall submit to iGraf x a listing of output and such other data as iGraf x reasonably may request to reproduce operating conditions similar to those present when You detected an error. Superior Technical Support is only available in selected countries and languages as specified by iGraf x. In North America, Superior Technical Support hours are Monday – Friday, 9:00 AM to 7:00 PM ET (Eastern Time) excluding iGraf x holidays. In Europe, Superior Technical Support hours are Monday – Friday, 10:00 AM to 4:00 PM CET (Central European time) excluding iGraf x holidays. Additional geographies may be covered by iGraf x or iGraf x authorized resellers in their respective locations.

(iii) Superior Technical Support during the relevant Subscription Term for all of Customer's installed iGraf x Software for which Superior Technical Support has been purchased.

(iv) Higher priority queue placement is given to Superior Technical Support incidents when issues must be escalated through the iGraf x development organization for assistance or fixes.

(v) When iGraf x determines these methods to be necessary to address Superior Technical Support issues, iGraf x may offer You the option to use screen-sharing technology and collaboration phone calls to aid in incident resolution.

(vi) You may designate no more than five (5) individuals at any one point in time who will be the direct contact points that communicate with iGraf x in order for iGraf x to deliver Superior Technical Support. You may change any of these designated individuals by written notice to iGraf x.

7. Fees and Payment

- 7.1 **Fees.** You shall pay all fees specified in the Order Forms. The fees are based on Cloud Services subscriptions and Technical Support, if any, purchased pursuant to the relevant Order Form and not actual usage. Payment of fees is required annually in advance of each twelve-month period that makes up the relevant Subscription Term unless specifically indicated otherwise by iGraf x on the relevant Order Form. Payment obligations are non-cancellable, fees paid are non-refundable, and the number of Authorized User subscriptions purchased cannot be decreased during the relevant Subscription Term. Authorized User subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, fees for Authorized User subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the Subscription Term.
- 7.2 **Invoicing and Payment.** You will provide iGraf x with a valid purchase order or alternative purchase document reasonably acceptable to iGraf x. Unless specifically indicated otherwise in the relevant Order Form, iGraf x will invoice You in advance of each twelve-month period that makes up the relevant Subscription Term and all invoiced charges are due within thirty (30) days after relevant the invoice date. You are responsible for providing complete and accurate billing and contact information to iGraf x and notifying iGraf x of any changes to such information.
- 7.3 **Taxes.** The fees for the Cloud Services and for Technical Support do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases of Cloud Services and Technical Support. If iGraf x has the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide iGraf x with a valid tax exemption certificate authorized by the appropriate taxing authority.
- 7.4 **Overdue Charges/Suspension of Cloud Services/Acceleration.** If any fees or charges are not paid by the due date, iGraf x may charge late interest of 1.5% of the past due balance per month or the maximum rate allowed by law, whichever is lower, from the date when such payments are due and payable as provided herein to the date of payment. At its sole discretion, if any fees or charges are not paid by the due date, iGraf x may also condition future subscription renewals and orders for Cloud Services and Technical Support on shorter payment terms than those specified in Section 7.2. If any amount owing by You under this Agreement for iGraf x Cloud Services or Technical Support are thirty (30) or more days overdue, iGraf x may, without

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limiting its other rights and remedies, accelerate Your unpaid fee obligations under this Agreement so that all such obligations become immediately due and payable, and suspend, without liability on the part of iGrafx, the iGrafx Cloud Services and/or Technical Support to You until such amounts are paid in full. You shall pay on demand all iGrafx's reasonable attorney fees and other costs incurred by iGrafx to collect any fees or charges due to iGrafx under this Agreement following Your breach of the payment obligations in this Section 7.

7.5 **Audit.** iGrafx, or a third party designated by iGrafx, may audit You and Your Authorized Users access and use of the Cloud Services to verify compliance with the provisions of this Agreement. Such audit will be conducted during normal business hours, on reasonable advance notice and in a manner that does not unreasonably interfere with Your business operations.

8. **Confidentiality.**

8.1 As used in this Agreement, the "Disclosing Party" means the party that discloses, transmits or otherwise communicates Confidential Information to the Receiving Party. The "Receiving Party" means the party that receives the Confidential Information from the Disclosing Party. "Confidential Information" means any information, maintained in confidence by the Disclosing Party, communicated in written or oral form, marked as proprietary, confidential or otherwise so identified, and/or any information that by its form, nature, content or mode of transmission would to a reasonable recipient be deemed confidential or proprietary, including, without limitation, iGrafx Cloud Services, Documentation, and any benchmark data and results produced, Your Data, the terms and conditions of this Agreement, and the Disclosing Party's business and marketing plans, technology and technical information, product plans and designs, and business processes. Confidential Information shall exclude: (i) information which the Receiving Party has been authorized in writing by the Disclosing Party to disclose without restriction; (ii) information which was rightfully in the Receiving Party's possession or rightfully known to the Receiving Party prior to receipt of such information from the Disclosing Party; (iii) information which was rightfully disclosed to the Receiving Party by a third party having proper possession of such information, without restriction; (iv) information which is part of or enters the public domain without any breach of the obligations of confidentiality by the Receiving Party; and (v) information which is independently developed by the Receiving Party without use or reference to the Disclosing Party's Confidential Information.

8.2 **Protection of Confidential Information.** The Receiving Party shall treat the Disclosing Party's Confidential Information confidentially and use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind which shall not be less than a reasonable standard of care. The Receiving Party shall (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement or any Order Form to any third-party other than its Affiliates and their legal counsel and accountants without the other party's prior written consent. The Receiving Party agrees, at any time upon the request of the Disclosing Party or any termination or expiration of this Agreement, to return the Disclosing Party's Confidential Information or certify the destruction of such Confidential Information.

8.3 **Compelled Disclosure.** The Receiving Party shall be permitted to disclose Confidential Information in connection with a judicial or administrative proceeding to the extent that such disclosure is required under applicable law or court order, provided that the Receiving Party shall, where reasonably possible, give the Disclosing Party prompt and timely written notice of any such proceeding and shall offer reasonable cooperation in any effort of the Disclosing Party to obtain a protective order. If iGrafx is compelled by law or court order to disclose Your Confidential Information as part of a civil proceeding to which You are party, and You are not contesting the disclosure, then You will reimburse iGrafx for its reasonable costs of complying with such disclosure, including but not limited to costs of compiling and providing secure access to the Confidential Information.

8.4 **Remedies.** In the event of a breach of this Section 8, the Disclosing Party may not have an adequate remedy at law. The parties therefore agree that the Disclosing Party may be entitled to seek the remedies of temporary and permanent injunction, specific performance or any other form of equitable relief deemed appropriate by a court of competent jurisdiction. For iGrafx's Cloud Services, the underlying iGrafx software products, Documentation, and iGrafx or Your Confidential Information expressly designated in writing as perpetually confidential, the obligations of this section are perpetual and shall survive termination. For all other Confidential Information, the foregoing obligations shall continue for three (3) years from the date of initial disclosure or the duration of the Agreement, whichever is longer.

9. **Limited Warranties/ Disclaimers.**

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- 9.1 **iGraf x's Limited Warranties.** iGraf x warrants that it has the legal power to enter into this Agreement, and (ii) the Cloud Services shall perform substantially as described in the applicable Documentation. For breach of warranty by iGraf x, Your exclusive remedy shall be as provided in Section 12.2 (Termination for Cause) and Section 12.3 (Refund or Payment on Termination).
- 9.2 **DISCLAIMER.** EXCEPT AS OTHERWISE SET OUT IN SECTION 9.1, THE CLOUD SERVICES ARE PROVIDED TO YOU ON AN "AS IS" BASIS. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 9.1, IGRAF X MAKES NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THIRD PARTY WARRANTIES, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE EXPRESSLY EXCLUDED. IF IGRAF X IS PROVIDING THE CLOUD SERVICES TO YOU ON A TRIAL BASIS, SUCH TRIAL SERVICES ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY.
- 9.3 **Your Warranties.** You warrant that (i) You have validly entered into this Agreement and that you have the legal power to do so; (ii) You are the rightful owner and copyright holder of, or that you have obtained all necessary and appropriate rights and licenses for all Your Data or data generated by You through the Cloud Services and for any Non-iGraf x Products and third party services you may use with the Cloud Services; and (iii) You shall comply with the Agreement and You will ensure compliance to the Agreement by the Authorized Users.
- 10. Indemnification by You.** You shall defend iGraf x against any claim, demand, suit or proceeding made or brought against iGraf x by a third party alleging that Your Data, Your use of the Cloud Services in breach of this Agreement, or Your use of any third party services or Non-iGraf x Products infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a "Claim"), and shall indemnify iGraf x against any claims, damages, fees (including attorney fees, costs, fines, expenses, and judgments finally awarded against iGraf x as a result of, or for any amounts paid by iGraf x under an iGraf x-approved settlement of, a Claim against iGraf x. iGraf x will (i) promptly give You written notice of the Claim; (b) give You sole control of the defense and settlement of the Claim (provided that You may not settle any Claim unless the settlement unconditionally releases iGraf x of all liability or that requires a payment by iGraf x); and (c) provide to You all reasonable assistance at Your expense.
- 11. Limitation of Liability.**
- 11.1 IN NO EVENT WILL IGRAF X OR ITS LICENSORS BE LIABLE TO YOU OR ANY OTHER PARTY, FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF CLOUD SERVICES, TECHNICAL SUPPORT, DOCUMENTATION, OR OTHER IGRAF X PROVIDED MATERIAL WHETHER SUCH ACTION IS BASED IN CONTRACT, IN TORT, OR OTHERWISE INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND WHETHER OR NOT IGRAF X HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE FORESEEABLE.
- 11.2 In no event shall iGraf x's total liability exceed the total fees paid in respect of Cloud Services by You to iGraf x during the past calendar year immediately preceding the event giving rise to the claim.
- 12. TERM AND TERMINATION**
- 12.1 **Term of Agreement.** This Agreement commences on the date You accept it and continues until all Authorized User subscriptions granted in accordance with this Agreement have expired or been terminated.
- 12.2 **Termination for Cause.** A party may terminate this Agreement for cause: (i) upon 30 days' written notice to the other party of a material breach of this Agreement if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. iGraf x may terminate this Agreement immediately for cause if You breach Section 3.3 (Your Responsibilities and Restrictions) or Section 5 (Proprietary Rights) of the Agreement.
- 12.3 **Refund or Payment upon Termination.** If You terminate the Agreement for cause in accordance with 12.2 above, as Your sole remedy and iGraf x's sole liability, iGraf x shall refund You any prepaid fees covering the remainder of the term of all unused Cloud Services subscriptions after the effective date of termination. If iGraf x terminates the Agreement for cause, You shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to iGraf x for the period prior to the effective date of termination.

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- 12.4 **Your Data at Termination.** On expiration or termination of the relevant Subscription Term or on termination of this Agreement, the Cloud Services shall terminate on the applicable expiration or termination date and no further access to the Services shall be available to You. Prior to any such expiration or termination, it is Your responsibility to download from the Services any of Your Data that You wish to retain. If migration services are required by You in connection with a termination or expiration, such migration services may be purchased from iGrafCloud at its then current professional services rates and subject to a separate professional services agreement between You and iGrafCloud. If You do not download Your Data prior to expiration of the relevant Subscription Term or termination of the Agreement as applicable then, You may purchase a backup use license to receive a copy of Your Data from iGrafCloud. To do this You must send a written request to iGrafCloud for a copy of Your Data within seven (7) days after the expiration or termination of the Agreement and purchase the backup use license. After the purchase is made, iGrafCloud will provide You, within a reasonable time thereafter, with access to a download site where you can download an encrypted file containing an MS SQL database backup of Your Data. The download will be available for 30 days after it becomes available. You will be entitled to install a local version of the Services current at the time of termination. iGrafCloud will provide an activation key including one user to access all the information in the database. This activation key will expire one year after the backup was provided and has a watermark indicating this is a non-production license.
- 12.5 **Surviving Provisions.** Section 5 (Proprietary Rights), Section 7 (Fees and Payment), Section 8 (Confidentiality), Section 9.2 (Disclaimer), Section 10 (Indemnification by You), Section 11 (Limitation of Liability), Section 12.3 (Refund or Payment upon Termination), Section 12.4 (Your Data at Termination), Section 13.6 (Notices) and Section 13 (Miscellaneous) shall survive any termination or expiration of this Agreement.
- 13. Miscellaneous**
- 13.1 **Force Majeure.** If iGrafCloud's performance of any part of this Agreement is prevented or delayed or the Cloud Services are not available due to, including without limitation, an act of God, act of war, act of terrorism, civil unrest, fire, flood, governmental action, Internet service provider failures or delays, denial of service attack, labor dispute or other causes or circumstances beyond iGrafCloud's control ("Force Majeure Event"), then iGrafCloud will be excused from performance for the length of that prevention or delay.
- 13.2 **Binding Effect/Assignment.** This Agreement is binding upon the parties' respective representatives, successors and assigns; however, Customer shall not assign this Agreement or its rights or obligations under the Agreement, whether by operation of law or otherwise, without the prior written consent of iGrafCloud. iGrafCloud may assign this Agreement to any iGrafCloud affiliate or subsidiary or to any purchaser of iGrafCloud's rights to any of the Cloud Services or related software.
- 13.3 **Remedies.** Nothing in this Agreement is intended to waive or limit any remedy available to iGrafCloud at law or in equity, including without limitation any remedy available under International copyright laws.
- 13.4 **Additional Provisions.** If any portion of this Agreement is held to be unenforceable, the remainder of this Agreement shall be valid and enforceable. A delay or failure by a party in exercising its rights and remedies provided for in this Agreement is not and will not be a waiver of any right. No amendment or waiver of this Agreement will be binding unless it has been assented to in writing by both parties.
- 13.5 **Arbitration and Governing Law.** All disputes, controversies, or claims between the parties arising out of or relating to this Agreement which cannot be settled by agreement shall be submitted for determination by arbitration by a single arbitrator in accordance with the rules of the American Arbitration Association ("AAA"). The arbitration will be governed by the Commercial Arbitration Rules of the AAA. An award rendered by the arbitrator shall be final and binding on all parties in the proceeding. Except as provided below in this Section, the parties stipulate that the provisions of this Section shall be a complete defense to any proceeding instituted in any federal, state or local court or before any administrative tribunal with respect to any dispute, controversy or claim arising out of or relating to this Agreement. The arbitrator has the right to award or include in any award such relief which the arbitrator deems proper in the circumstances including, without limitation, money damages, specific performance, injunctive relief and legal fees and costs. The award and decision of the arbitrator will be conclusive and binding upon all of the parties, and judgment upon the award may be entered in any court of competent jurisdiction. Each party reserves the right, exercisable only where such party reasonably believes the circumstances justify immediate relief, to obtain temporary restraining orders and temporary, preliminary or permanent injunctive relief from a court of competent jurisdiction, and such party is not required to submit such a dispute for arbitration. Unless the parties otherwise agree, the arbitration proceedings shall be conducted in English and shall take place in Portland, Oregon, at a location designated by the arbitrator. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is excluded from application to this Agreement. The governing law shall be that of the State of Oregon without regard to conflict of laws

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principles. This Section shall survive the termination or expiration of this Agreement.

- 13.6 Notices. All notices required or permitted under this Agreement shall be in writing and shall be delivered to the recipient party at the address identified in the Order Form or to such other addresses as the parties may advise each other of from time to time in writing. All notices under this Agreement will be deemed to have been duly given if delivered personally or by a nationally recognized courier service or, mailed by U.S. registered or certified mail, return receipt requested, postage prepaid. All notices under this Agreement that are addressed as provided in this Section, (a) if delivered personally or by a nationally recognized courier service, will be deemed given upon delivery, or (b) if delivered by mail in the manner described above, will be deemed given upon confirmation of delivery.
- 13.7 Independent Contractors. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 13.8 No third-party beneficiaries. There are no third-party beneficiaries to this Agreement.
- 13.9 Entire Agreement. This Agreement, including any addenda and exhibits and the referenced Order Forms, constitute the entire agreement between the Parties with respect to the Cloud Services and any other matter hereunder, and supersedes any and all prior and contemporaneous negotiations, proposals, representations and agreements, whether written or oral, between the Parties with respect to the Cloud Services or any subject matter hereunder. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

Exhibit A

**Superior Technical Support Service Level Response Times
for Cloud Services**

Applicable only if You have purchased Superior Technical Support for the relevant Subscription Term. Severity Level determinations offered by the You may be adjusted by iGraf x based on its assessment of the verified facts of the reported incident. All response times efforts will be made by iGraf x on a commercially reasonable efforts basis.

Severity Level	Description of Severity Level	Characteristics	Response Time
1 – Critical Priority	Critical issue that occurs on Customer’s production system and which prevents use of the Cloud Services. A large number of Authorized Users are blocked from working with the Cloud Services with no procedural workaround.	<ul style="list-style-type: none"> • Cloud Services hangs or crashes • Critical Cloud Services functionality not available • The Cloud Services output demonstrates data loss or data corruption • Large number of Authorized Users are blocked from use of the Cloud Services • Impact is escalating quickly 	4 business hours from initial receipt* by iGraf x of logged incident via the Technical Support telephone line or iGraf x Service Desk.
2 – Major Priority	Major issue that occurs on production system severely impacting Authorized Users. A large number of Authorized Users are impacted by this issue but are still able to use the Cloud Services in a limited capacity.	<ul style="list-style-type: none"> • Major performance degradation of the Cloud Services • Important Cloud Services functionality not available • Authorized Users are impacted by the issue but still able to use the Cloud Services in a limited fashion • Impact is escalating 	8 business hours from initial receipt* by iGraf x of logged incident via the Technical Support telephone line or iGraf x Service Desk.
3 – Medium Priority	Issue causing a partial or non-critical loss of Cloud Services functionality on a production system. A small number of Authorized Users are affected.	<ul style="list-style-type: none"> • Some Cloud Services functions not available • Minor performance degradation • Small number of Authorized Users impacted • Impact is not escalating 	12 business hours from initial receipt* by iGraf x of logged incident via the Technical Support telephone line or iGraf x Service Desk.
4 – Low Priority	Issue occurring on non-production system, documentation issue or other non-impacting issue whether on a non-production system or production system.	<ul style="list-style-type: none"> • Incorrect Cloud Services behavior without impact. 	48 business hours from initial receipt* by iGraf x of logged incident via the Technical Support telephone line or iGraf x Service Desk.

* Initial receipt by iGraf x means either Customer (1) logs an incident via the iGraf x the Technical Support telephone line by speaking with an on-duty iGraf x Superior Technical Support representative or (2) logs an incident using the iGraf x Service Desk during Superior Technical Support hours. If an incident is logged using the iGraf x Service Desk outside of Superior Technical Support hours, the initial receipt by iGraf x occurs the first business hour of the relevant iGraf x Superior Technical Support hours after such submission. Superior Technical Support Hours are as detailed in Section 7.5(b)(ii) of the Agreement.