

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 ARE NOT PERMITTED TO ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

1. **Definitions.**

- a. “Affiliate” means any entity that directly or indirectly Controls, is Controlled, or is under common Control with the relevant Party. For the purposes of Affiliate definition “Control” or “Controlled” means direct or indirect ownership or control of more than 50% of the voting interests in the relevant Party.
- b. “Authorized Users” means Customer’s and Customer’s Affiliates’ employees and independent contractors who are authorized by Customer 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 Customer or by iGraf x at Customer’s request.
- c. “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.
- d. “Customer” means the entity set forth in the Order Form.
- e. “Customer’s Data” means all electronic data or information that Customer submits to the Cloud Services.
- f. “Documentation” means the online documentation for the Cloud Services as updated from time to time by iGraf x.
- g. “iGraf x” means the iGraf x legal entity named as the contracting iGraf x entity on the Order Form.
- h. “Malicious Code” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.
- i. “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 Customer.
- j. “Order Form” means (i) 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 Customer for the purchase of Cloud Services or (ii) a purchase order that is issued by on or on behalf of the Customer that is consistent with the relevant iGraf x-provided document including a sales quotation or proposal for the transaction.

- k. “Party” means either iGraf x or Customer individually. Collectively, iGraf x and Customer may be referred to as the “Parties”.
- l. “Subscription Term” means the period that begins when iGraf x starts commissioning the Cloud Services platform for Customer’s use within five (5) business days from the date iGraf x receives Customer’s purchase order or purchase authorization for the relevant Authorized User subscription(s) for Cloud Services and ending twelve (12) months thereafter unless another period is stated by iGraf x in the relevant Order Form.
- m. “Technical Support” means technical support services, dependent on the technical support services level purchased by Customer, provided by iGraf x.

2. **Cloud Services Obligations.**

2.1 During the applicable Subscription Term, iGraf x will provide Cloud Services to Customer in accordance to this Agreement and the relevant Order Form either directly or through a third-party services provider.

2.2 Contingent on Customer’s full compliance with the terms and conditions of the Agreement and the applicable Order Form, iGraf x grants Customer 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 Customer’s internal business use. Unless specified otherwise in the Order Form, use of the Cloud Services is purchased as Authorized User subscriptions. Cloud Services may be accessed by no more than the specific number of Authorized Users set forth in the relevant Order Form subject to other license metrics for a particular Cloud Services component that may be stated in the Order Form. Additional Authorized User

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subscriptions and other subscription types may be purchased during the applicable Subscription Term, prorated for the remainder of the Subscription Term in effect at the time the additional subscriptions are purchased, and the added 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 a 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. All rights not expressly granted in this Agreement are reserved by iGrafx.

2.3 Except as otherwise stated in the applicable Order Form, the Subscription Term, any Technical Support, all Authorized User subscriptions, and any other subscription types shall automatically renew for additional periods equal to the expiring Subscription Term and the fees shall increase for each renewal of the Subscription Term to iGrafx's then-current list price, unless either Party gives the other notice of non-renewal at least sixty (60) days before the end of the relevant Subscription Term.

2.4 At the end of a Subscription Term, iGrafx 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.

3. Use of the Cloud Services

3.1 iGrafx's Responsibilities. iGrafx will use commercially reasonable efforts to make the Cloud Services available 24 hours a day, 7 days a week with an uptime of 99.95%, except for: (a) planned downtime (of which iGrafx shall give at least 8 hours' notice and which iGrafx shall schedule to the extent practicable after 6:00 p.m. Customer's local time), (b) outages at our hosted service provider, or (c) any Force Majeure event, iGrafx will provide the Cloud Services in accordance with applicable laws and government regulations. If Customer has purchased a current Technical Support plan for the Cloud Services, provide Technical Support pursuant to the relevant plan.

3.2 (i) Data Protection. iGrafx has taken reasonable organizational and technical measures to protect and secure Customer's Data but does not guarantee the security of Customer's Data. iGrafx will not be liable in any way for any unauthorized access or loss of Customer's Data except if such unauthorized access or loss of Customer's Data is directly caused by iGrafx's failure to take reasonable organizational and technical measures to protect and secure Customer's Data. iGrafx shall not (a) modify Customer's Data, (b) disclose

Customer's Data except as compelled by law in accordance with Section 9.3 or as expressly permitted in writing by Customer, or (c) access or use Customer's Data except for the purposes of meeting its obligations under this Agreement. iGrafx's Privacy Policy, located at <https://www.igrafx.com/Customer/legal/privacy>, applies to iGrafx collection, disclosure, transfer, use or other processing of Customer's personal data and the terms of such policy are incorporated into this Agreement by reference. Notwithstanding anything to the contrary in this Agreement, iGrafx's only obligation for Customer's personal data is as set forth in the iGrafx Privacy policy, and, if applicable, the iGrafx Data Processing Addendum referenced below.

(ii) EU Personal Data Compliance. As part of Customer's use of the Cloud Services and Technical support, Customer may submit personal data to iGrafx and iGrafx may have access to personal data in the course of providing services to Customer. iGrafx will (a) only access personal data to provide the Cloud Services and Technical Support, as permitted in this Agreement, or as required by law; and (b) take appropriate organizational and technical measures to protect personal data from unauthorized or unlawful use as well as accidental damage, destruction or loss. If it is necessary in the course of providing the Cloud Services or Technical Support, iGrafx may transfer personal data to the United States of America. If Customer has personal data originating in the European Union, the iGrafx Data Processing Addendum <https://www.igrafx.com/Customer/legal/DPA>, which is incorporated into this Agreement by reference, will govern the access, transfer and use of personal data. .

3.3 Customer's Responsibilities and Restrictions.

- a. Customer shall be solely responsible for acquiring and maintaining all communication services and equipment necessary for Customer 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. iGrafx 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 iGrafx for any cost to Customer as a result of such modification and Customer is responsible for making the necessary modifications in services and equipment necessary for Customer's access and use the Cloud Services.
- b. Customer shall be responsible for Customer's and Authorized Users' compliance with this Agreement.
- c. Customer shall be responsible for the accuracy, appropriateness, integrity, quality, reliability,

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and legality of Customer's Data and of the means by which Customer acquired Customer's Data including any personal data contained therein. Customer shall not submit any sensitive data or sensitive personal data to iGrafx or the Cloud Services.

- d. Customer shall prevent unauthorized access to or use of the Cloud Services, and notify iGrafx promptly of any such unauthorized access or use. Customer shall maintain appropriate security of Customer's Data to protect Customer's Data from unauthorized access and use and shall routinely archive Customer's Data. Customer determines and controls the access and permissions for each of its Authorized Users within the Cloud Services including without limitation permissions to set up create Authorized User accounts, access the user management functions of the Cloud Services, or access Customer's Data within the Customer's Cloud Services instance. Customer, and not iGrafx, is responsible for all actions within Customer's Cloud Services instance, including all actions taken using any of Customer's user login credentials.
- e. Customer and Customer's Authorized Users shall use the Cloud Services only in accordance with the Agreement, Documentation and applicable laws and government regulations.
- f. Customer shall not, nor shall any Authorized Users, (i) 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, (ii) use the Cloud Services to store or transmit Malicious Code, (ii) interfere with or disrupt the integrity or performance of the Cloud Services or third party data contained therein, or (iii) attempt to gain unauthorized access to the Cloud Services or their related systems or networks or to the accounts of any iGrafx customer.
- g. Export Control. (i)The Cloud Services and underlying software, Documentation, and derivatives thereof are subject to export laws and regulations and embargoes and sanctions of the United States and other countries. Customer and its Authorized Users shall comply with all applicable import and export laws and regulation in connection with the access, download (if any) and use of the Cloud Services. The Customer shall not (and shall not allow any Authorized User or third party) to export or re-export, access, download, or use the Cloud Services or any direct product thereof into any embargoed or terrorist-supporting country or to any national or resident of such countries; to any person on the Denied Persons, Entity , or Unverified lists maintained by

the U.S. Commerce Department, the Specially Designated Nationals list and Consolidated Sanctions list maintained by the U.S. Treasury Department (collectively, the "Prohibited Persons"); or to any to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority.

(ii) The Customer and all Authorized Users represent that: (1) they are not a citizen, national or resident of, and are not under the ownership, control of, or acting on behalf of any Prohibited Persons, embargoed or terrorist-supporting country, nor any other country to which the United States has prohibited export; (2) they will not download or otherwise export or re-export the Cloud Services, directly or indirectly, to the countries mentioned in clause (1) nor to citizens, nationals or residents of those countries; (3) they are not listed in the lists set forth in 3(g)(i); (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 3(g)(i); 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"). Customer and the Authorized Users are not authorized or licensed to use the Cloud Services for use in, or in conjunction with High Risk Use.

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-iGrafx Products.

4.1 Non-iGrafx Products and Third-Party Services. iGrafx may enable the use of third party services or Non-iGrafx Products with the Cloud Services for Customer's convenience. Any acquisition or purchase by Customer

of such Non-iGrafx Products or third-party services, and any exchange of data between Customer and any third-party provider, is solely between Customer and the applicable third-party provider. iGrafx does not warrant or support Non-iGrafx Products or services, whether or not they are made available by iGrafx. Subject to Section 4.2 (Integration with Non-iGrafx Services), no purchase of Non-iGrafx Products or third-party services is required to use the Cloud Services except a supported computing device, operating system, web browser and Internet connection. Customer agrees that Customer and Customer's Authorized Users shall use such Non-iGrafx Products and third party services in Customer's sole discretion and at Customer's sole risk and iGrafx shall have no responsibility or liability with respect to such Non-iGrafx Products or third party services used by Customer or Customer's Authorized Users or for any act or omission of such third party provider. If Customer enables, installs or links to Non-iGrafx Products for use with the Cloud Services, Customer acknowledges that iGrafx may allow providers of those Non-iGrafx Products to access Customer's Data as required for the interoperation of such Non-iGrafx Products with the Cloud Services. iGrafx shall not be responsible or liable for any disclosure, modification or deletion of Customer's Data resulting from any such access by Non-iGrafx Product providers or that results from Customer's use of Non-iGrafx Products. If the provider of any such Non-iGrafx Products or third-party services ceases to make the Non-iGrafx Products or third-party services available for interoperation or use with the Cloud Services on terms acceptable to iGrafx, iGrafx may cease enabling the use of third party services or Non-iGrafx Products with the Cloud Service without entitling Customer to any notice, refund, credit, or other compensation.

5. Proprietary Rights.

- 5.1 Ownership/Proprietary Rights. iGrafx, LLC and its licensors retain all right, title, copyright, patent, trademark, trade secret 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. Customer 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 copyright, patent, trademark, trade secret or other right of intellectual property not expressly granted hereunder is exchanged between the Parties.
- 5.2 Restrictions. The Customer and its Authorized Users shall use the Cloud Services only in accordance with the Documentation and the Agreement. Customer shall not, nor shall any Authorized User, (i) permit any third party to access the Cloud Services except as permitted herein,

(ii) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share the Cloud Services, permit service bureau use of the Cloud Services or otherwise commercially exploit the Cloud Services, (iii) copy the Cloud Services or any design, features, functionality or graphics contained in the Cloud Services or Documentation; (iv) create derivative works based on the Cloud Services or the Documentation, (iii) reverse engineer, decrypt, extract, disassemble or decompile the Cloud Services, or use any other method or process to derive or discover confidential or trade secret information, algorithms, underlying ideas, methods, processes or code of the Cloud Services, or (iv)) access or use the Cloud Services in order to build or support a competitive product or service.

- 5.3 Customer's Data. Customer grants iGrafx, iGrafx's Affiliates and relevant contractors a worldwide license to host, transmit and display Customer's Data as reasonably necessary to provide the Cloud Services. Subject to the limited rights granted by Customer hereunder, iGrafx acquires no right, title or interest from Customer or Customer's licensors under this Agreement in or to Customer's Data, including any intellectual property rights therein.

5.4 Feedback/Suggestions/Satisfaction Survey/Telemetric Data.

(a) Feedback/Suggestions. Customer 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 Customer, including Authorized Users, relating to the operation of the Cloud Services. iGrafx has no obligation to implement any such Feedback.

(b) Satisfaction Survey. From time to time, iGrafx may contact Customer and Customer's Authorized Users, either via the Cloud Services or by email provided by Customer and Customer's Authorized Users to measure customer satisfaction with the Cloud Services and Technical Support. All customer satisfaction data collected by iGrafx from Customer and Customer's 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.

(c) Telemetry Data. iGrafx collects information, which shall be referred to as "Telemetry Data", about the how quickly the Cloud Services functions respond and efficiently such functions react in interactions with Customer's Authorized Users. Customer consents on behalf of Customer and Customer's Authorized Users to the collection and use of Telemetry Data by iGrafx. Because Telemetry Data collection is important to enable iGrafx to improve, maintain and support the Cloud Services it is not possible prevent the collection of Telemetry Data.

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5.5 U.S. 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 include Basic Technical Support. iGrafx also offers Superior Technical Support, as detailed in (b) below, for purchase. 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 Cloud Services.

(a) **Basic Technical Support.** Customer 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 Cloud Services only if 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.

(b) **Superior Technical Support.** If Customer has purchased Superior Technical Support or a Cloud Services package with Superior Technical Support included, Customer will receive Superior Technical Support which includes:

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

(ii) Customer shall have the right to log support incidents via iGrafx's online Service Desk or by calling the iGrafx support line, and iGrafx 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. iGrafx will respond to reported support incidents on a reasonable commercial efforts basis. Customer shall submit to iGrafx a listing of output and such other data as iGrafx reasonably may request to reproduce operating conditions similar to those present when Customer detected an error. Superior Technical Support is only available in selected countries and languages as specified by iGrafx. In North America, Superior Technical Support hours are Monday – Friday, 9:00 AM to 7:00 PM ET (Eastern Time) excluding iGrafx holidays. In Europe, Superior 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 resellers in their respective locations.

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

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

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

7. **Cloud Services Implementation and Training Services.** If Customer purchases iGrafx professional services such as implementation and/or training services (individually and collectively "Services") as indicated in an Order Form, the purchase order reflecting such purchase of Services conforming to the sales quotation shall be project authorization ("Project Authorization") by

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Customer to perform the Services. iGrafx's authorized representative will perform the Services subject the terms and conditions of this Agreement. iGrafx shall have no obligation to perform Services until and unless it accepts a Project Authorization. To the extent necessary to allow iGrafx to perform the Services, Customer shall be responsible for providing iGrafx's representatives with access to its employees, relevant software and hardware controlled by Customer, and, if Services are being performed onsite, with safe access to Customer's premises. iGrafx's representatives will comply with Customer's security regulations and rules with respect to the Customer's premises, provided that such regulations and results are provided to iGrafx before the start of Services. All iGrafx materials and information used or generated by iGrafx in the performance of Services ("Services Materials"), and all intellectual property rights therein, shall be the sole and exclusive property of iGrafx. iGrafx grants Customer a perpetual, non-exclusive, non-transferable license, without the right to sublicense and solely for Customer's own internal business operations, to use the Services Materials subject this Agreement. The rights to any Customer's Data, or results of any compilation thereof, which are used in or result from the Services and Services Materials, shall remain Customer's sole property. All Services must be used by Customer within twelve months after the date of the relevant Project Authorization and there will be no refunds provided for amounts paid for Services, or any portion thereof, not used within the applicable twelve-month period. All Services are non-cancelable and non-refundable.

8. Fees and Payment

- 8.1 Fees. Customer shall pay all fees specified in the Order Forms or renewal invoices. 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 iGrafx 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.
- 8.2 Invoicing and Payment. Customer will provide iGrafx with a valid purchase order or alternative purchase document reasonably acceptable to iGrafx. Unless specifically indicated otherwise in the relevant Order

Form, iGrafx will invoice Customer 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. Customer is responsible for providing complete and accurate billing and contact information to iGrafx and notifying iGrafx of any changes to such information.

- 8.3 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"). Customer is responsible for paying all Taxes associated with Customer's purchases of Cloud Services and Technical Support. If iGrafx has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides iGrafx taxing authority.
- 8.4 Overdue Charges /Acceleration. If any fees or charges are not paid by the due date and provided that the invoice is not the subject of a good faith dispute of which Customer has informed iGrafx in writing prior to the due date, iGrafx 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, iGrafx may also condition future subscription renewals and orders for Cloud Services and Technical Support on shorter payment terms than those specified in Section 8.2. If any amount owing by Customer under this Agreement for iGrafx Cloud Services or Technical Support are thirty (30) or more days overdue, iGrafx may, without limiting its other rights and remedies, accelerate Customer's 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 Customer until such amounts are paid in full. Customer 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 Customer's breach of the payment obligations in this Section 8.
- 8.5 Audit. iGrafx, or a third party designated by iGrafx, may, audit the Customer and its Authorized Users access and use of the Cloud Services to verify compliance with the provisions of this Agreement. Such audit will be conducted at iGrafx's expense, during normal business hours, on reasonable advance notice and in a manner that does not unreasonably

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interfere with the Customer's or its Authorized Users business operations.

9. **Confidentiality.**

9.1 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, Customer's 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.

9.2 **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.

9.3 **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.

9.4 **Remedies.** In the event of a breach of this Section 9, 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 Customer's 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.

10. **Limited Warranty/ Disclaimers.**

10.1 **iGrafx's Limited Warranty.** iGrafx warrants during the applicable Subscription Term that the Cloud Services shall perform substantially in compliance with the applicable Documentation. For breach of warranty by iGrafx, Customer's sole and exclusive remedy and iGrafx's sole liability will be for iGrafx to use reasonable efforts resolve the non-compliance within a reasonable time after Customer notifies iGrafx in writing of such non-compliance or (ii) if iGrafx determines it cannot reasonably resolve the non-compliance, iGrafx may terminate the Agreement and Customer's access to the Cloud Services and provide a refund of any prepaid Cloud Services fees for remainder of the Subscription Term for the the non-conforming Cloud Services as set forth in Section 13.3 (Refund or Payment on Termination). The warranty shall not apply if the Cloud Services are not used in accordance with the Documentation or the Cloud Services are provided on free of charge or trial basis.

10.2 **DISCLAIMER.** EXCEPT AS OTHERWISE SET OUT IN SECTION 10.1, TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, THE CLOUD SERVICES ARE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS. EXCEPT AS

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EXPRESSLY PROVIDED IN SECTION 10.1, 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, FITNESS FOR A PARTICULAR PURPOSES SUITABILITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, SATISFACTORY QUALITY, MERCHANTABILITY, AND ALL SUCH WARRANTIES ARE EXPRESSLY EXCLUDED. IF IGRAF X IS PROVIDING THE CLOUD SERVICES TO CUSTOMER ON A TRIAL BASIS, SUCH TRIAL SERVICES ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY.

10.3 RESERVED.

10.4 Customer's Warranties. Customer warrants that (i) Customer has validly entered into this Agreement and that Customer has the legal power to do so; (ii) Customer is the rightful owner and copyright holder of, or that Customer has obtained all necessary and appropriate rights and licenses for all Customer's Data or data generated by Customer and its Authorized Users through the Cloud Services and for any Non-iGraf X Products and third party services Customer may use with the Cloud Services; and (iii) Customer will ensure compliance to the Agreement by the Authorized Users.

11. Indemnification by Customer. Customer shall defend iGraf X against any claim, demand, suit or proceeding made or brought against iGraf X by a third party alleging that Customer's Data infringes or misappropriates the intellectual property rights or privacy 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 Customer written notice of the Claim; (b) give Customer sole control of the defense and settlement of the Claim (provided that Customer 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 Customer all reasonable assistance at Customer's expense.

12. Limitation of Liability.

12.1 IN NO EVENT WILL IGRAF X OR ITS LICENSORS BE LIABLE TO CUSTOMER 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.

12.2 In no event shall iGraf X's total liability exceed the total fees paid in respect of Cloud Services by Customer to iGraf X during the past calendar year immediately preceding the event giving rise to the claim.

13. TERM AND TERMINATION

13.1 Term of Agreement. This Agreement commences on the Effective Date and continues until all Authorized User subscriptions granted in accordance with this Agreement have expired or been terminated.

13.2 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 Customer breaches Section 3.3 (Customer's Responsibilities and Restrictions) or Section 5 (Proprietary Rights) of the Agreement.

13.3 Refund or Payment upon Termination. If Customer terminates the Agreement for cause in accordance with 13.2 above, iGraf X shall refund Customer 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, Customer 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 Customer of the obligation to pay any fees payable to iGraf X for the period prior to the effective date of termination.

13.4 Customer's 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 Customer. Prior to any such expiration or termination, the Customer is responsible for exporting any of Customer's Data stored in the Customer's Cloud Services instance that Customer wishes to retain using the export functions of the Cloud Services platform. iGraf X will securely delete all Customer's Data after the expiration or termination of the Subscription Term within a reasonable time unless legally prohibited from

doing so. If migration services are required by Customer in connection with a termination or expiration, such migration services may be purchased from iGrafx at its then current professional services rates and subject to a separate professional services agreement between Customer and iGrafx.

13.5 Surviving Provisions. Section 5 (Proprietary Rights), Section 8 (Fees and Payment), Section 9 (Confidentiality), Section 10.2 (Disclaimer), Section 11 (Indemnification by Customer), Section 12 (Limitation of Liability), Section 13.3 (Refund or Payment upon Termination), Section 13.4 (Customer's Data at Termination), and Section 14 (Miscellaneous) shall survive any termination or expiration of this Agreement.

14. Miscellaneous

14.1 Identification of Customer. iGrafx and iGrafx Affiliates may publicly identify Customer as a customer of iGrafx's products and services as well as include Customer's corporate name and logo, in digital or print formats, in customer lists that iGrafx publishes on its website or in its sales and marketing materials.

14.2 Force Majeure. If iGrafx'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, pandemics or other causes or circumstances beyond iGrafx's control ("Force Majeure Event"), then iGrafx will be excused from performance for the length of that prevention or delay.

14.3 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 iGrafx. iGrafx may assign this Agreement to any iGrafx affiliate or subsidiary or to any purchaser of iGrafx's rights to any of the Cloud Services or related software.

14.4 Remedies. Nothing in this Agreement is intended to waive or limit any remedy available to iGrafx at law or in equity, including without limitation any remedy available under International copyright laws.

14.5 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.

14.6 Arbitration and Governing Law.

(a) iGrafx, LLC. If the iGrafx contracting entity is iGrafx, LLC, 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. 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 principles.

(b) iGrafx GmbH. If the iGrafx contracting entity is iGrafx GmbH, then arbitration will be administered by the International Court of Arbitration of the International Chamber of Commerce in accordance with the ICC Rules or such other recognized arbitral tribunal and/or arbitration rules as the parties agree. If the Customer is domiciled in Germany, the arbitration proceedings will be conducted in Munich, Germany and the governing law will be the laws of Germany. If the Customer is domiciled in the United Kingdom or a country other than Germany, the arbitration proceedings will be conducted in London, England and the governing law will be the laws of England and Wales.

(c) Except as provided below in this subsection, 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. The Emergency Arbitrator Provisions will not apply to an arbitration conducted under the ICC Rules. At the discretion of the arbitrator, the prevailing

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party in an arbitration under this Section 14 is entitled to reimbursement of its reasonable attorney fees.

(d) This Section 14.6 shall survive the termination or expiration of this Agreement.

14.7 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.

14.8 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.

14.9 Third-party beneficiaries. iGrafx's licensors are third

party beneficiaries of this Agreement. There are no other third party beneficiaries of this Agreement.

14.10 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 Customer's 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 Customer has purchased Superior Technical Support for the relevant Subscription Term. Severity Level determinations offered by the Customer 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 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 6 (b)(ii) of the Agreement.