



TERMS OF SERVICE FOR CHALLO

IMPORTANT, READ CAREFULLY: YOUR USE OF AND ACCESS TO THE CHALLO SERVICE AND ASSOCIATED SOFTWARE (COLLECTIVELY, THE "SERVICE") OF CafeX COMMUNICATIONS INC. ("CafeX") IS CONDITIONED UPON COMPLIANCE BY YOU ("CUSTOMER") WITH, AND YOUR ACCEPTANCE OF, THESE TERMS OF SERVICE (THESE "TERMS OF SERVICE"). IF YOU ARE SUBSCRIBING FOR THE SERVICE OR ACCEPTING THESE TERMS OF SERVICE ON BEHALF OF AN ENTITY, YOU REPRESENT THAT YOU ARE AUTHORIZED TO DO SO AND IN SUCH CASE, REFERENCES TO "CUSTOMER" REFER TO SUCH ENTITY.

BY EITHER CLICKING/CHECKING THE "I AGREE" BUTTON/BOX, OR BY REGISTERING FOR OR UTILIZING THE SERVICE, CUSTOMER ACCEPTS THE TERMS OF, AND AGREES TO BE BOUND BY, THESE TERMS OF SERVICE. IF CUSTOMER ORDERS THE SERVICE THROUGH AN ORDER FORM (AS DEFINED BELOW), THE ORDER FORM MAY CONTAIN ADDITIONAL TERMS AND CONDITIONS REGARDING THE SERVICE, AND THOSE ADDITIONAL TERMS AND CONDITIONS ARE HEREBY INCORPORATED INTO THESE TERMS OF SERVICE. IF CUSTOMER REGISTERS FOR A FREE TRIAL FOR THE SERVICE, THE APPLICABLE PROVISIONS OF THESE TERMS OF SERVICE WILL ALSO GOVERN THAT FREE TRIAL. IF CUSTOMER HAS ENTERED INTO ANOTHER SUBSCRIPTION AGREEMENT WITH CafeX CONCERNING CUSTOMER'S USE OF THE SERVICE, THEN THE TERMS OF THAT AGREEMENT SHALL CONTROL WHERE IT CONFLICTS WITH THESE TERMS OF SERVICE. THE SERVICE IS NOT AVAILABLE TO PERSONS WHO ARE NOT LEGALLY ELIGIBLE TO BE BOUND BY THESE TERMS OF SERVICE.

THESE TERMS OF SERVICE MAY BE CHANGED OR SUPPLEMENTED BY CafeX FROM TIME TO TIME AT OUR DISCRETION AS DESCRIBED IN SECTION 18(C).

1. DEFINITIONS. For purposes of these Terms of Service, the following terms shall have the following meanings:

(a) "Content" means all data, documents, information and other content sent or transmitted by Customer or a User, or displayed or uploaded by Customer or a User when using the Service, including, without limitation, chat messages and meeting content.

(b) "Documentation" means the applicable usage guides and policies for the Service, as updated from time to time, accessible via <https://CafeX.to/kb>.

(c) "Guest" means an individual who is not a User but is invited by a User solely to join a live session within a Track. Guests shall not have any other rights or access with respect to such Track.

(d) "Initial Term" has the meaning given it in Section 11(a).

(e) "Order Form" means an order form, CafeX quote or online registration form pursuant to which Customer orders a subscription for the Service.

(f) "Privacy Policy" has the meaning given it in Section 15.

(g) "Renewal Term" has the meaning given it in Section 11(a).



(h) "Reseller" means any other party authorized by CafeX to resell, distribute, or promote the Service.

(i) "Track" means a CafeX track created using the Service.

(j) "Users" means all individuals who are authorized by Customer to create a Track or who are invited to join a Track as a member. There are different categories of Users with different rights and access with respect to a Track.

2. SERVICE.

(a) CafeX will provide the Service, and Users and Guests may access and use the Service, in accordance with these Terms of Service. Subject to the terms and conditions of these Terms of Service, CafeX hereby grants Customer a non-exclusive, non-transferable right to access and use the Service during the Initial Term and each Renewal Term, solely for use by Users and Guests in accordance with the terms and conditions herein. Such use of the Service shall be in accordance with the service/pricing plan selected by Customer and shall be for Customer's internal business purposes only. Subject to the terms and conditions of these Terms of Service, CafeX hereby grants to (i) each User who is authorized by Customer to create a Track or is invited by Customer to join a Track, and (ii) each Guest who is invited by a User solely to join a live session within a Track, a non-exclusive, non-transferable right to access and use the Service solely for such purpose in accordance with the terms and conditions herein. CafeX may, at its sole discretion, modify or discontinue certain features of the Service from time to time without prior notice, including to comply with applicable laws and regulations. Customer shall order the Service via an Order Form and selecting a Service plan.

(b) CafeX reserves all rights not expressly granted to Customer, Users and Guests in these Terms of Service. Except for the limited rights and licenses expressly granted under these Terms of Service, nothing in these Terms of Service grants, by implication, waiver, estoppel, or otherwise to Customer, Users, Guests or any third party any intellectual property rights or other right, title, or interest in or to the Service.

(c) Use of the Service requires one or more compatible devices and Internet access. Because use of the Service involves hardware, software, and Internet access, an individual's ability to use the Service may be affected by the performance of these factors. High speed Internet access is recommended. Customer acknowledges and agrees that such system requirements, which may be changed from time to time, are the responsibility of Customer, the Users and the Guests. Information regarding minimum system requirements to use the Service can be found at <https://CafeX.to/requirements>.

(d) CafeX shall provide support to Customer for the Service at no additional charge via <https://CafeX.to/gettingsupport>. CafeX may revise its support services from time to time in its sole discretion, and shall use commercially reasonable efforts to notify Customer of any such changes that are material.

3. FREE TRIAL. If Customer registers for a free trial of the Service, Customer's Users and Guests shall be entitled to use the Service on a trial basis free of charge until the earlier of (a) the end of the free trial period specified by CafeX, or (b) the start date of any paid subscription ordered by Customer for the Service. A free trial shall include the number and types of subscriptions as are specified by CafeX. Free trials shall be governed by these Terms of Service, provided that notwithstanding anything to the contrary in these Terms of Service or elsewhere, (i) free trials are



licensed hereunder on an “as-is”, “with all faults” and “as available” basis, with no representations or warranties, express or implied, of any kind; and (ii) the indemnification obligations of CafeX in Section 14(a) shall not apply. CafeX may limit, suspend, or terminate a free trial in its sole discretion if it believes that the activities of any User or Guest are in violation of these Terms of Service. Additional free trial terms and conditions (beyond those set forth in these Terms of Service) may appear on the free trial registration web page, and any such additional terms and conditions are incorporated into these Terms of Service by reference and are legally binding. ANY CONTENT ENTERED INTO THE SERVICE DURING A FREE TRIAL AND STORED BY CafeX WILL BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES A SUBSCRIPTION FOR THE SERVICE OR EXPORTS SUCH CONTENT BEFORE THE END OF THE FREE TRIAL PERIOD.

4. RESPONSIBILITY FOR REGISTRATION INFORMATION; USAGE RESTRICTIONS.

(a) Customer and each User shall be required to provide information about Customer or such User, as the case may be, in order to register for and/or use the Service. Customer and each User agrees that any such information provided by it shall be accurate. Customer and each User may also be asked to choose a username and password. Customer and each User is entirely responsible for maintaining the security of Customers and such User’s user name and password, and shall not disclose them to any third party.

(b) Customer, Users and Guests shall not use the Service, and Customer shall not permit the Service to be used by any User or Guest, for any purposes beyond the scope of the access granted in these Terms of Service, based on the Service plan selected by Customer. Customer, Users and Guests shall not, and Customer shall not permit any User or Guest to, (i) copy, modify, or create derivative works of the Service or Documentation; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Service or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Service, in whole or in part; (iv) remove any proprietary notices from the Service or Documentation; (v) input, upload, transmit, or otherwise provide to or through the Service, any information or materials that are unlawful or injurious, or contain, transmit, or activate any code or programs intended to damage the operation of the Service or another’s computer or system (such as viruses, worms, time bombs, cancelbots and Trojan horses); (vi) access or use the Service for purposes of competitive analysis of the Service, the development, provision, or use of a competing software service or product or any other purpose that is to the detriment or commercial disadvantage of CafeX; (vii) engage in any activity or use the Service in any manner that could damage, disable, overburden, impair or otherwise interfere with or disrupt the Service, or any servers or networks connected to the Service or CafeX’s security systems; (viii) engage in activity that is fraudulent, false, or misleading; or (ix) use the Service to communicate any message or material that is harassing, libelous, threatening, obscene, indecent, or in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law, including, but not limited, to anti-spam, export control, privacy and anti-terrorism laws and regulations and laws requiring the consent of subjects of audio and video recordings.

(c) Recognizing the global nature of the Internet, Customer agrees to comply with applicable local rules or codes of conduct regarding online behavior and acceptable Content and the transmission of technical data exported from the United States or the country in which Customer or a User or Guest resides. It is Customer’s sole responsibility to ensure Customer, its Users and Guests have the right to use all features of the Service in their jurisdiction. CafeX reserves the right to investigate and take appropriate action against anyone who, in the sole discretion of CafeX, is suspected of violating this provision, including without limitation, reporting



such person to law enforcement authorities or suspending Customer's use of the Service. The Service may not be available for use in all countries, and use of the Service is void where prohibited.

5. **LIMITATIONS ON USE.** In order to prevent any fraud, exploitation or abuse of the Service, Customer agrees to limit its use to normal, reasonable use relative to the types and levels of usage by typical customers on the Service. CafeX may determine that abnormal, unreasonable or impermissible usage is occurring, and may take appropriate steps, including suspension or termination of the Service, even if the number of minutes, storage space, etc. used is not excessive, when Customer's usage patterns during more than one month reflect excessive meeting lengths, uninterrupted meeting recordings, excessive recorded meeting lengths, meetings made outside of business hours, or other usage patterns indicative of an attempt to evade the terms of these Terms of Service.

6. **VIOLATIONS BY USERS AND GUESTS; CONTENT.**

(a) Customer assumes responsibility for any violation of the terms of these Terms of Service by any User or Guest. If Customer becomes aware of any violation of these Terms of Service in connection with use of the Service by any User or Guest, please contact CafeX at compliance@cafex.com. CafeX may investigate any complaints and violations that come to the attention of CafeX and may take any action that CafeX believes is appropriate, including, but not limited to issuing warnings, removing the Content or terminating accounts and/or User profiles. However, because situations and interpretations vary, CafeX also reserves the right not to take any action.

(b) Customer is solely responsible for the Content (including, without limitation, personally identifiable information) provided by Customer, Users and Guests, or displayed or uploaded by Customer, Users or Guests when using the Service, and for securing all rights from Users and Guests necessary for CafeX to provide the Service without violating the rights of any third party, including, without limitation, the right to transfer personally identifiable information and other Content to, and permit its storage and processing by, CafeX and its contractors and service providers. Customer acknowledges that Content collected through the Service will be transferred, stored and processed by CafeX in the United States; provided that Customer may configure its account to store Content in its cloud storage (if it is with a supported service provider). See the CafeX Privacy Policy for more information about how CafeX may collect and use personally identifiable information. Under no circumstances will CafeX be liable in any way for any Content viewed while using the Service, including, but not limited to, any errors or omissions in any such Content, or any loss or damage of any kind incurred as a result of the use of, access to, or denial of access to any Content.

(c) When using the Service, none of Customer or any User or Guest may post, modify, distribute, or reproduce any copyrighted material, trademarks, rights of publicity or other proprietary rights without obtaining the prior written consent of the owner of such proprietary rights. CafeX may deny access to the Service to any User or Guest who is alleged to infringe another party's copyright.

(d) CafeX will maintain reasonable physical and technical safeguards to prevent unauthorized disclosure of or access to Content, in accordance with industry standards. CafeX does not monitor and/or moderate Content, except (i) as needed to provide, support or improve the provision of the Service, (ii) to detect, prevent, or otherwise address fraud, security, unlawful, or technical issues, (iii) where instructed or permitted by Customer, or (iv) as otherwise required by law, to enforce these Terms of Service or to exercise or protect the legal rights of CafeX or its



licensors. In addition, non-personally identifiable (anonymized) data and information generated by the Service may be used by CafeX and its suppliers, licensors and contractors for purposes such as, but not limited to, troubleshooting, optimization and tuning, system improvements and customer support.

7. REPRESENTATIONS AND WARRANTIES.

(a) Each party represents and warrants that it has the full right, power and authority to enter into these Terms of Service, to grant the rights and licenses granted hereunder and to perform its obligations hereunder.

(b) CafeX represents and warrants to Customer that it shall use reasonable efforts consistent with prevailing industry standards to maintain the Service in a manner which minimizes errors and interruptions in the Service. The Service may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by CafeX or by third party providers, or because of other causes beyond CafeX's reasonable control. CafeX shall provide advance notice on its website of any scheduled Service disruption. CafeX does not make any representations or guarantees regarding uptime or availability of the Service. Without limiting the foregoing, the Service is not designed or licensed for use in hazardous environments requiring fail-safe controls, including without limitation operation of nuclear facilities, aircraft navigation/communication systems, air traffic control, and life support or weapons systems, and CafeX specifically disclaims any express or implied warranty of fitness for such purposes. THE FOREGOING WARRANTY DOES NOT APPLY, AND CAFEX STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD PARTY PRODUCTS OR SERVICES.

(c) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 7(B) ABOVE, THE SERVICE IS PROVIDED "AS IS" AND CafeX, ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS AND RESELLERS HEREBY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. CafeX, ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS AND RESELLERS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 7(B) ABOVE, CafeX, ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS AND RESELLERS MAKE NO WARRANTY OF ANY KIND REGARDING THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE, REGARDING THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICE, OR THAT THE SERVICE WILL MEET CUSTOMER'S OR ANY USER'S OR GUEST'S REQUIREMENTS, OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. ANY MATERIAL, DATA OR OTHER CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS AT CUSTOMER'S, EACH USER'S AND EACH GUEST'S OWN DISCRETION AND RISK.

8. FEES AND PAYMENTS. Customer agrees to pay all fees for the Service set forth in the Order Form for the Initial Term and each Renewal Term. All fees shall be paid in US Dollars by the due date, or if no due date is provided, within fifteen (15) days of Customer's receipt of an invoice/bill therefor. Customer hereby authorizes CafeX, either directly or through our payment processing service, to charge such fees via Customer's selected payment method, if applicable, upon due date. CafeX may change prices at any time; provided, however, that (a) no price increase shall apply to Customer during Customer's then current Initial Term or Renewal Term, as the case may be, and (b) CafeX will notify Customer of any price increase that would apply to any Renewal Term. All fees and other amounts payable by Customer under these Terms of Service



are exclusive of, and Customer is responsible for, all sales, use, and excise taxes, VAT, and any other similar taxes, duties, and charges of any kind imposed by any foreign, federal, provincial, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on CafeX's income. Except as otherwise specified herein or in an Order Form, (x) fees are based on subscriptions purchased and not actual usage, and (y) quantities purchased cannot be decreased during the then current Initial Term or Renewal Term, as the case may be. If Customer fails to make any payment when due, without limiting the other rights and remedies of CafeX hereunder or under law, (i) CafeX may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law, (ii) Customer shall reimburse CafeX for all reasonable costs incurred by CafeX in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees, and (iii) if such failure continues for ten (10) days or more, CafeX may suspend Customer's and its Users' and Guests' access to any portion or all of the Service until such amounts are paid in full.

9. PROPRIETARY RIGHTS.

(a) CafeX owns all right, title, and interest, including all intellectual property rights, in and to (i) the Service and Documentation, and all improvements, enhancements or modifications thereto, and (ii) all trade names, trademarks, service marks, logos and domain names associated or displayed with the Service.

(b) CafeX does not own any right, title, and interest, including any intellectual property rights, in or to the Content. When Customer, any User or any Guest sends, displays or uploads Content to the Service, Customer, such User and such Guest grants CafeX a worldwide, limited-term license to host, copy, store, transmit and display such Content as reasonably necessary for CafeX to provide the Service in accordance with these Terms of Service.

(c) If Customer, any User or any Guest sends or transmits any communications or materials to CafeX by mail, email, telephone, or otherwise, suggesting or recommending changes to the Service, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions or the like ("Feedback"), Customer, such User or such Guest hereby assigns any interest he/she/it may have in such Feedback, and CafeX is free to use and exploit such Feedback irrespective of any other obligation or limitation between the parties governing such Feedback.

(d) CafeX may offer an application programming interface that provides additional ways to access and use the Service ("API"). Such API is considered a part of the Service, and its use is subject to all these Terms of Service. A Customer may only access our API for such Customer's internal business purposes, in order to create interoperability and integration between the Service and other products, services and systems. When using an API, Customers should follow the relevant developer guidelines. CafeX reserves the right at any time to modify or discontinue, temporarily or permanently, access to an API (or any part of it) with or without notice. An API is subject to changes and modifications, and Customers are solely responsible to ensure that their use of the API is compatible with the current version.

10. MEETING RECORDINGS. For paid subscriptions, Customer may elect to record a meeting within a Track. When Customer records a meeting, the video and audio are recorded in the CafeX cloud storage, where it is stored unless Customer configures its account to store the recordings in its cloud storage (if it is with a supported service provider).

11. TERM; TERMINATION; SURVIVAL.



(a) The initial term shall begin on the date set forth in the applicable Order Form and, unless terminated earlier pursuant to the express provisions these Terms of Service, will continue in effect for the period specified in an Order Form (the "Initial Term"). These Terms of Service will automatically renew for additional successive terms of the same length as the Initial Term (or such other term as may be specified in the Order Form) unless earlier terminated pursuant to the express provisions of these Terms of Service (each a "Renewal Term"). If the Order Form is submitted via an online registration, the terms of the order (such as the fees, the commencement date and the Initial Term) shall be as set forth in such registration. Notwithstanding the foregoing, Customer may terminate these Terms of Service at any time; provided that in such case, these Terms of Service shall continue until the end of the then current Initial Term or Renewal Term, as the case may be. If Customer terminates these Terms of Service, Customer will not receive a refund for any Service fees already paid.

(b) In addition to any other express termination right set forth in these Terms of Service:

(i) CafeX may terminate these Terms of Service, effective on written notice to Customer, if Customer (A) fails to pay any amount when due hereunder, and such failure continues more than twenty (20) days after CafeX delivers written notice thereof; or (B) breaches any of its obligations under Section 4(b) or Section 17;

(ii) either party may terminate these Terms of Service, effective on written notice to the other party, if the other party materially breaches this Agreement (other than a breach by Customer referred to in Section 11(b)(i)), and such breach (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; and

(iii) either party may terminate these Terms of Service, effective immediately upon written notice to the other party, if the other party (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(c) Upon expiration or earlier termination of these Terms of Service, Customer shall immediately discontinue use of the Service. Unless these Terms of Service are validly terminated for cause by Customer in accordance with Section 11(b)(ii), Customer will pay any unpaid fees covering the remainder of the then current Initial Term or Renewal Term, as the case may be. No expiration or termination will entitle Customer to any refund.

(d) In the event that CafeX is retaining any meeting recordings or other Content in the CafeX cloud because Customer has not configured its account to store the recordings and other Content in its cloud storage (if it is with a supported service provider), upon request by Customer made within thirty (30) days after the effective date of termination or expiration of these Terms of Service, CafeX will make such meeting recordings and other Content available to Customer for export or download. After that 30-day period, CafeX will have no obligation to maintain or provide meeting recordings or other Content, and may thereafter delete or destroy all copies thereof in its systems or otherwise in its possession or control, unless legally prohibited.



(e) Sections 1, 6, 7(c), 8, 9, 11(c), (d) and (e) and Section 12 – 18 shall survive any termination or expiration of these Terms of Service.

12. EXPORT RESTRICTIONS. Customer acknowledges that the Service, or portions thereof, may be subject to the export control laws of the United States and foreign countries. Customer, its Users and Guests will not export re-export, divert, transfer or disclose any portion of the Service or any related technical information or materials, or any Content, directly or indirectly, in violation of any applicable export law or regulation. Customer represents and warrants that (a) Customer, its Users and Guests are not citizens of, or located within, a country or territory that is subject to U.S. trade sanctions or other significant trade restrictions (including without limitation Cuba, Iran, North Korea, Syria, and the Crimea) and that Customer, its Users and Guests will not access or use the Service, or export, re-export, divert, or transfer the Service, in or to such countries or territories; (b) Customer, its Users and Guests are not identified on any U.S. government restricted party lists (including without limitation the U.S. Treasury Department's List of Specially Designated Nationals and Blocked Persons and Foreign Sanctions Evaders List, the U.S. Department of Commerce's Denied Parties List, Entity List, and Unverified List, and the U.S. Department of State proliferation-related lists); and (c) that no Content created or submitted by Customer, its Users or Guests is subject to any restriction on disclosure, transfer, download, export or re-export under applicable law.

13. INJUNCTIVE RELIEF. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 17 or, in the case of Customer, use or threatened use of the Service contrary to these Terms of Service, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

14. INDEMNIFICATION.

(a) CafeX shall indemnify, defend and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("Losses") incurred by Customer resulting from any third party claim, suit, action or proceeding ("Third Party Claim") that the Service, or any use of the Service in accordance with these Terms of Service and the Documentation, infringes or misappropriates such third party's intellectual property rights, provided that Customer promptly notifies CafeX in writing of the Third Party Claim, cooperates with CafeX, and allows CafeX sole authority to control the defense and settlement of such Third Party Claim. CafeX may not settle any such Third Party Claim unless Customer consents to such settlement (which consent shall not be unreasonably withheld or delayed). If such a claim is made or appears possible in CafeX's sole discretion, CafeX shall have the right to (i) modify or replace the Service, or any component or part thereof, to make it non-infringing, or (ii) obtain the right for Customer to continue use. If CafeX determines that neither alternative is reasonably available, CafeX may terminate these Terms of Service, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer. The indemnification obligations of CafeX in this Section 14(a) will not apply to the extent that the alleged infringement arises from (w) use of the Service other than in accordance with these Terms of Service and the Documentation; (x) Content or any event giving rise to Customer's indemnity obligations under Section 14(b); or (y) any third party products or services.



(b) Customer shall indemnify, defend and hold harmless CafeX, its affiliates and their licensor's, subcontractors, Resellers and service providers from and against any Losses resulting from (i) any Third Party Claim that the Content, or any use of the Content in accordance with these Terms of Service, infringes or misappropriates such third party's intellectual property, privacy or publicity rights, and (ii) any claims based on Customer's or any of its User's or Guest's use of the Service in a manner not authorized by these Terms of Service and the Documentation; provided that CafeX promptly notifies Customer in writing of the claim, cooperates with Customer, and, with respect to Third Party Claims, allows Customer sole authority to control the defense and settlement of such claim. Customer may not settle any such Third Party Claim unless CafeX consents to such settlement (which consent shall not be unreasonably withheld or delayed). CafeX will have the right, at its option, to defend itself against any such Third Party Claim or to participate in the defense thereof by counsel of its own choice at its expense.

(c) THIS SECTION 14 SETS FORTH CUSTOMER'S SOLE REMEDIES AND CafeX'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICE INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

15. PRIVACY; THIRD PARTY SERVICES.

(a) Use the Service is subject to CafeX's Privacy Policy, which can be found at <https://CafeX.to/CafeXprivacy> (the "Privacy Policy"), which is incorporated herein by this reference. The Privacy Policy may be updated by CafeX from time to time at its discretion. Customer understands and agrees that CafeX may contact Customer via e-mail or otherwise with information relevant to Customer's use of the Service.

(b) The Service enables Customers and Users to engage and procure certain third party services, products, apps and tools in connection with the Service (collectively, "Third Party Services"). Customer and Users acknowledge and agree that regardless of the manner in which such Third Party Services may be offered, CafeX does not, in any way, endorse any such Third Party Services, and shall not be in any way responsible or liable with respect to any such Third Party Services. A Customer's and a User's relationship with such Third Party Services and any terms governing their payment for, and use of, such Third Party Services, including without limitation, the collection, processing and use of data by such Third Party Services, are subject to a separate contractual arrangement between such Customer or such User and the provider of such Third Party Service (the "Third Party Agreement"). Through the Service, Customer and Users may enable an integration with Third Party Services which will allow an exchange, transmission, modification or removal of data between the Service and such Third Party Services, including without limitation, the Content, the scope of which is determined by the applicable actions set by such integration. Customer and Users hereby acknowledge that any access, collection, transmission, processing, storage or any other use of data, including Content, by a Third Party Service, is governed by the Third Party Agreement, including any applicable privacy policy, and CafeX is not responsible for any access, collection, transmission, processing, storage or any other use of data, including Content, by the Third Party Service or for such Third Party Service's privacy and security actions, inactions or general practices. By integrating and/or using a Third Party Service, Customer and Users acknowledge and agree that (i) they are solely responsible for their compliance with applicable privacy restrictions, laws and regulations, including their use of the Third Party Service and other data activities they may conduct or may permit third parties, including the Third Party Service, to conduct; and (ii) the activities and use of the data by them may result in a modification and/or removal of data, either in the Service and/or in the integrated Third Party Service. CafeX shall have no obligation of any kind, for any such modification and/or removal of data. Third Party Services may be offered free of charge or for a certain fee.



16. LIMITATION OF LIABILITY. IN NO EVENT WILL CafeX OR ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS OR RESELLERS BE LIABLE FOR ANY (A) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (B) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (C) LOSS OF GOODWILL OR REPUTATION; (D) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (E) COST OF REPLACEMENT GOODS OR SERVICES ARISING OUT OF THESE TERMS OF SERVICE, THE USE OF OR INABILITY TO USE THE SERVICE, OR THE PROVISION OF OR FAILURE TO PROVIDE TECHNICAL OR OTHER SUPPORT SERVICES, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE) CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF CafeX, ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS OR RESELLERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, THE MAXIMUM CUMULATIVE LIABILITY OF CafeX AND ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS AND RESELLERS, AND CUSTOMER'S EXCLUSIVE REMEDY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THESE TERMS OF SERVICE, WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE SERVICE IN THE TWELVE (12) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH CLAIMS. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT CafeX HAS SET ITS PRICES AND ENTERED INTO THESE TERMS OF SERVICE IN RELIANCE UPON THE LIMITATIONS OF LIABILITY SPECIFIED HEREIN, WHICH ALLOCATE THE RISK BETWEEN THE PARTIES AND FORM A BASIS OF THE BARGAIN BETWEEN THE PARTIES. BECAUSE SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER.

17. CONFIDENTIAL INFORMATION. From time to time during the term hereof, either party may disclose or make available to the other party non-public information about its business affairs, products, confidential intellectual property, trade secrets, third party confidential information and other sensitive or proprietary information that is either identified as confidential or should reasonably be understood to be confidential given the nature of the information and the circumstances of disclosure (collectively, "Confidential Information"). Confidential Information of the disclosing party will not, without the prior written consent of the disclosing party, be disclosed by the receiving party to any third party except that the receiving party may disclose the Confidential Information or portions thereof to its directors, officers, employees, subcontractors, agents and representatives on a need-to-know basis, so long as each such recipient agrees to be bound to maintain the confidentiality of such information upon terms no less restrictive than those set forth herein. Confidential Information does not include information that (a) is publicly available other than by an act or omission of the receiving party or its representatives, (b) subsequent to its disclosure to the receiving party was lawfully received by the receiving party without confidentiality restriction from a third party having the right to disseminate the information, (c) was known by the receiving party without confidentiality restriction prior to its receipt, or (d) was independently developed by the receiving party without use of the disclosing party's Confidential Information. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party (to the extent permitted by applicable law) so that such other party may attempt to obtain a protective order or other prohibition or limitation on such compelled disclosure; or (ii) to establish a party's rights under these Terms of Service, including to make required court filings. Each party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire two (2) years after then end of the Term; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations



of non-disclosure will survive the termination or expiration of these Terms of Service for as long as such Confidential Information remains subject to trade secret protection under applicable law.

18. MISCELLANEOUS

(a) These Terms of Service are governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of New York. Any legal suit, action, or proceeding arising out of or related to these Terms of Service or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of New York in each case located in the city of New York and County of New York, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

(b) If any provision of these Terms of Service is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of these Terms of Service or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, such term or provision will be amended to achieve as nearly as possible the same economic effect of the original provision and the remainder of these Terms of Service s Agreement will remain in full force and effect.

(c) CafeX may elect to change or supplement these Terms of Service from time to time at its sole discretion. CafeX will exercise commercially reasonable business efforts to provide notice to Customer of any material changes to these Terms of Service. Any changes or supplements to these Terms of Service will be binding upon Customer from and after the next Renewal Term. If Customer continues using the Service during the next Renewal Term, Customer will be deemed to have accepted the changes and supplements to these Terms of Service. These Terms of Service have been prepared in the English language and such version shall be controlling in all respects and any non-English version is solely for accommodation purposes.

(d) No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in these Terms of Service, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms of Service will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(e) Except for payment obligations, neither party will be responsible for failure of performance due to causes beyond its reasonable control. Such causes include (without limitation) accidents, severe weather events, acts of God, labor disputes, actions of any government agency, epidemic, pandemic, shortage of materials, acts of terrorism, unavailability of third party hosting services, or the stability or availability of the Internet or connectivity outside of the control of a party.

(f) The parties are independent contractors. These Terms of Service do not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

(g) These Terms of Service and each Order Form embody the entire understanding and agreement between the parties respecting the subject matter of these Terms of Service and supersede any and all prior understandings and agreements between the parties respecting such subject matter. Neither party shall be bound by any additional or different terms that might appear



in any acknowledgements or purchase orders, or in any other communications between us, unless those terms are expressly agreed to by a written signed agreement between the parties. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of CafeX, provided that Customer may assign these Terms of Service to its successor entity, resulting from a merger, acquisition, or sale of all or substantially all of its assets or voting rights, except for an assignment to a competitor of CafeX, and provided that Customer provides CafeX with prompt written notice of such assignment and the respective assignee agrees, in writing, to assume all of Customer's obligations under these Terms of Service. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating party of any of its obligations hereunder. These Terms of Service are binding upon and inures to the benefit of the parties and their respective permitted successors and assigns. Any and all rights and remedies of CafeX upon a breach or other default by Customer under these Terms of Service will be deemed cumulative and not exclusive of any other right or remedy conferred by these Terms of Service or by law or equity on CafeX, and the exercise of any one remedy will not preclude the exercise of any other. The captions and headings appearing in these Terms of Service are for reference only and will not be considered in construing these Terms of Service.

(h) All notices under these Terms of Service must be given in writing and delivered either by hand, e-mail (receipt confirmed in the case of notices from Customer to CafeX), certified mail (return receipt requested, postage pre-paid), or nationally recognized overnight delivery service (all delivery charges pre-paid). Notices from CafeX to Customer shall be provided to the contact information CafeX has on file for Customer. Notices from Customer to CafeX shall be provided to CafeX Communications Inc., 1460 Broadway, Suite 9054, New York, NY 10036, USA, Attn: Financial Controller, or if by email, to terms@cafex.com. All such notices shall be effective on the date actually received, or in the case of mailed notices, three (3) business days (or seven (7) business days in the case of an international mailing) after such mailing. The above addresses/contact information may be changed at any time by giving prior written notice as above provided.

(i) CafeX may have its affiliate or subcontractor provide the Service (or some portion of the Service). While its affiliate or subcontractor may provide the Service or some portion of the Service, CafeX is responsible for their performance under these Terms of Service. These Terms of Service shall apply to Customer's subscription for the Service whether Customer purchases the Service from CafeX or a Reseller.

(j) If Customer is part of a U.S. Government agency, department or otherwise, either federal, state or local (a "Government Customer"), then the terms of this Section 18(j) shall apply to Customer. Government Customer's technical data and software rights related to the Service include only those rights customarily provided to the public as defined in these Terms of Service. Government Customer hereby agrees that 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), and that the Service qualifies as "Commercial Computer Software" and Commercial Computer Software Documentation" thereunder. If a government agency has a need for rights not granted under these terms, it must negotiate with CafeX to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be entered into as part of any applicable agreement. Any license provisions that are inconsistent with federal procurement regulations are not enforceable against a Government Customer.



Last modified - Neil Ellis - 2022-02-08