

## TERMS OF USE

YOU ARE PLACING AN ORDER (“**ORDER**”) WITH GREYSCALEGORILLA, INC. (“**SUPPLIER**”). IF YOU ARE PLACING THE ORDER AS AN INDIVIDUAL, “**CUSTOMER**” REFERS TO YOU INDIVIDUALLY. IF YOU ARE PLACING THE ORDER AS A REPRESENTATIVE OF AN ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THAT ENTITY, AND “**CUSTOMER**” REFERS TO THAT ENTITY. THE ORDER AND THESE TERMS OF USE (COLLECTIVELY, THE “**AGREEMENT**”) ARE A LEGAL CONTRACT BETWEEN CUSTOMER AND SUPPLIER. BY CLICKING THE “I ACCEPT” BUTTON, SIGNING THE ORDER OR USING THE SUPPLIER OFFERING, CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS REVIEWED AND ACCEPTS THIS AGREEMENT. IF CUSTOMER DOES NOT AGREE WITH ALL OF THIS AGREEMENT, DO NOT ACCESS OR OTHERWISE USE THE SUPPLIER OFFERING.

### 1. DEFINITIONS.

1.1 “**Documentation**” means the electronic or online user instructions and help files made available by Supplier for use with the Supplier Offering, as may be updated from time to time by Supplier.

1.2 “**Plugin**” means plugin software (but not including any open source software) made available by Supplier to Customer for download via the SaaS Service.

1.3 “**SaaS Service**” means use of and access to Supplier’s website (including, without limitation, training content) in accordance with Customer’s subscription set forth in the Order.

1.4 “**Stock Assets**” means materials, textures, models, LUTs, and alembic files made available to Customer within the SaaS Service and the Plugins that are designated as “Stock Assets”.

1.5 “**Supplier Offering**” means the SaaS Service, the Plugins and the Stock Assets.

1.6 “**Third-Party Offerings**” means software or products provided by third parties that that interoperate with the Supplier Offering, such as Cinema 4D.

1.7 “**User**” means (i) Customer, if Customer is an individual, or (ii) a Customer employee for whom access to the Supplier Offering has been purchased, if Customer is an entity.

### 2. ORDER; LICENSES; AND RESTRICTIONS.

2.1 **Order.** Customer is purchasing a subscription for Users to access and use the Supplier Offering pursuant to an Order. Except as otherwise set forth in the Order, each User subscription and each User login is for the designated User only and cannot be shared or used by

more than one User. If you are purchasing a “Teams” subscription, the subscription may be shared by multiple Users to the extent expressly stated in the Order, except that Customer may not allow the Supplier Offering to be used by more than the number of Users specified in the applicable Order.

**2.2 SaaS Service.** Subject to the terms and conditions of this Agreement and Customer’s payment of the applicable fees, Supplier grants to Customer, during the term of this Agreement, a limited, non-exclusive, non-transferable license for its Users to access and use the Supplier Offering in accordance with the Documentation.

**2.3 Plugins.** Subject to the terms and conditions of this Agreement and Customer’s payment of the applicable fees, Supplier grants to Customer, during the term of this Agreement, a limited, non-exclusive, non-transferable license for each User to download, copy and run the Plugins on not more than two computers controlled by the User, in accordance with the Documentation. The Plugins will be deemed accepted upon download and may not be rejected by Customer. Any open source software is licensed to Customer pursuant to the terms of the applicable open source software license for such Open Source Software and not the terms of this Agreement.

**2.4 Stock Assets.** Subject to the terms and conditions of this Agreement and Customer’s payment of the applicable fees, (i) Supplier grants Customer, during the term of this Agreement, a limited, non-exclusive, non-transferable license for each User to copy and modify the Stock Assets for the purpose of incorporating the Stock Assets into content and materials created by the User, and (ii) Supplier grants Customer a limited, perpetual, non-exclusive, non-transferable license for Customer to copy, distribute, publicly display and publicly perform the Stock Assets as part of such content and materials created by Users under clause (i), in each case, on the condition that (a) the primary value of such content and materials created by Users does not lie with the Stock Assets themselves, (b) Customer and Users may not distribute, publicly display, publicly perform or otherwise commercially exploit the Stock Assets by themselves as standalone products or as standalone paid services, (c) Customer and Users may not use the Stock Assets in any way that allows a third party to use, download, extract or access the Stock Assets as a stand-alone file, and (d) Customer and Users may not register, or apply to register, a trademark, design mark, service mark, sound mark, or tradename, that uses any Stock Assets (in whole or in part). If Supplier believes that a Stock Asset may be subject to a third-party claim, then Supplier may instruct Customer to cease all use, reproduction, modification, distribution, display, performance, and possession of such Stock Asset, in which case Customer and Users shall promptly comply with such instructions and also ensure the compliance of any third party to whom Customer distributed or allowed to possess such Stock Assets. Supplier may, at any time (1) discontinue the licensing of any Stock Assets and (2) deny the downloading of any Stock Assets.

**2.5 Restrictions.** Customer shall not, directly or indirectly, and Customer shall not permit any User or third party to: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the object code of the SaaS Service, the source code of the Supplier Offering

or underlying ideas or algorithms of the Supplier Offering; (b) modify, translate, or create derivative works based on any element of the Supplier Offering or any related Documentation (except as expressly permitted under **Section 2.4**); (c) rent, lease, distribute, sell, resell, assign, or otherwise transfer its rights to use the Supplier Offering (except as expressly permitted under **Section 2.4**); (d) use the Supplier Offering in a computer services business, third-party outsourcing service, on a service bureau basis, on a time-sharing basis, as a part of a hosted service provided by Customer, or on behalf of any third party; (e) remove any proprietary notices from the Supplier Offering or the Documentation; (f) use the Supplier Offering for any purpose other than its intended purpose; (g) interfere with or disrupt the integrity or performance of the Supplier Offering; or (h) attempt to gain unauthorized access to the Supplier Offering or their related systems or networks.

**2.6 Reservation of Rights.** Except as expressly granted in this Agreement, there are no other licenses granted to Customer, express, implied or by way of estoppel. All rights not granted in this Agreement are reserved by Supplier.

**2.7 Changes to Supplier Offering; Future Functionality.** Supplier may make changes to the Supplier Offering at any time. Customer agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Supplier regarding any future functionality or features.

### **3. THIRD-PARTY OFFERINGS.**

**3.1 Use of Third-Party Offerings.** Customer's use of Third-Party Offerings is solely between Customer and the applicable provider of the Third-Party Offering. Supplier does not warrant or support any Third-Party Offering.

**3.2 Integration with Third-Party Offerings.** The Supplier Offering contains features designed to interoperate with Third-Party Offerings. To use such features, Customer is required to obtain access to such Third-Party Offerings from their providers. If the provider of any Third-Party Offering ceases to make the Third-Party Offering available for interoperation with the corresponding Supplier Offering features on reasonable terms, Supplier may cease providing such features without entitling Customer to any refund, credit, or other compensation.

### **4. CUSTOMER OBLIGATIONS.**

**4.1 Passwords.** Supplier will issue to Customer, user logins and passwords for each User authorized to access and use the Supplier Offering. Customer shall be, and shall ensure that each of its Users are, responsible for maintaining the confidentiality of all user logins and passwords and for ensuring that each user login and password is used only by the User to which it was issued. Customer is solely responsible for any and all access and use of the Supplier Offering that occurs using logins and passwords Supplier issues to Customer or its Users. Customer agrees to immediately notify Supplier of any unauthorized use of any account or login and password issued to Customer's Users, or any other breach of security known to Customer.

4.2 **Acceptable Use.** Customer shall be solely responsible for its actions and the actions of its Users while using the Supplier Offering. Customer acknowledges and agrees: (a) to abide by all local, state, national, foreign, and international laws and regulations applicable to Customer's use of the Supplier Offering; (b) not to use the Supplier Offering for illegal, fraudulent, unethical or inappropriate purposes; (c) not to interfere or disrupt networks connected to the Supplier Offering or interfere with others' ability to access or use the Supplier Offering; (d) not to use the Supplier Offering in any manner that impairs the Supplier Offering, including, without limitation, the servers and networks on which the Supplier Offering is provided; and (e) to use the Supplier Offering only in accordance with the Documentation.

4.3 **Accuracy of Customer's Contact Information; Email Notices.** Customer agrees to provide accurate, current and complete information as necessary for Supplier to communicate with Customer from time to time regarding the Supplier Offering, issue invoices or accept payment, or contact Customer for other account-related purposes. Customer agrees to keep any online account information current and inform Supplier of any changes in Customer's legal business name, address, email address and phone number. Customer agrees to accept emails from Supplier at the e-mail addresses specified by its Users for login purposes. In addition, Customer agrees that Supplier may rely and act on all information and instructions provided to Supplier by Users from the above-specified e-mail address.

4.4 **Submissions.** Supplier's website may allow Customer or its Users to submit text, information, opinions, messages, comments, photos, and other content or material (each a "**Submission**"). Customer hereby grant to Supplier a non-exclusive, perpetual, irrevocable, royalty-free, fully paid-up, transferable, assignable, sublicensable (including the right to sublicense through multiple tiers), worldwide license to use, reproduce, modify, distribute, perform and display Submissions. Customer represents, warrants, and covenants that Submissions, and the use thereof, will not infringe or violate any intellectual property or other proprietary right of a third party.

## 5. **AVAILABILITY; ENHANCEMENTS.**

5.1 **Availability.** Subject to the terms and conditions of this Agreement, Supplier will use commercially reasonable efforts to make the Supplier Offering available with minimal downtime other than planned downtime, routine maintenance times, and unavailability due to any cause beyond the control of Supplier.

5.2 **Enhancements.** Certain enhancements to the Supplier Offering made generally available, during the term of this Agreement, at no cost to all subscribing customers will be made available to Customer at no additional charge. However, the availability of some new enhancements to the Supplier Offering may require the payment of additional fees, and Supplier will determine at its sole discretion whether access to any other such new enhancements will require an additional fee. This Agreement will apply to, and the Supplier Offering includes, any bug fixes, error corrections, new builds, enhancements, updates, upgrades and new modules to the Supplier Offering subsequently provided by Supplier to Customer hereunder.

## 6. FEES AND PAYMENT.

6.1 **Fees.** Customer agrees to pay all fees specified in the Order using one of the payment methods Supplier supports. Except as otherwise specified in this Agreement or in the Order, (a) fees are quoted and payable in United States dollars, (b) fees are based on Supplier Offering purchased, regardless of actual usage, and (c) payment obligations are non-cancelable and fees paid are non-refundable. Customer will not receive access to the Supplier Offering until Customer has paid the applicable fees.

6.2 **Taxes.** “**Taxes**” means all taxes, levies, imposts, duties, fines or similar governmental assessments imposed by any jurisdiction, country or any subdivision or authority thereof including, but not limited to federal, state, local or foreign sales, use, property, excise, service, transaction, privilege, occupation, gross receipts or similar taxes, in any way connected with this Agreement or the Order, and all interest, penalties or similar liabilities with respect thereto, except such taxes imposed on or measured by a party’s net income. Fees and charges imposed under this Agreement or the Order do not include Taxes. Customer shall be responsible for all of such Taxes. If, however, Supplier has the legal obligation to pay Taxes and is required or permitted to collect such Taxes for which Customer is responsible under this section, Customer shall promptly pay the Taxes invoiced by Supplier unless Customer has furnished Supplier with valid tax exemption documentation regarding such Taxes.

## 7. REPRESENTATIONS AND WARRANTIES; DISCLAIMER.

7.1 **Mutual Representations and Warranties.** Each party represents, warrants and covenants that it has the full power and authority to enter into this Agreement and to perform its obligations hereunder.

7.2 **Disclaimer.** EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 7.1, THE SUPPLIER OFFERING IS PROVIDED ON AN AS-IS BASIS. CUSTOMER’S USE OF THE SUPPLIER OFFERING IS AT ITS OWN RISK. SUPPLIER DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS, STATUTORY AND IMPLIED REPRESENTATIONS AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, QUALITY, SUITABILITY, OPERABILITY, ACCURACY (OF DATA OR ANY OTHER INFORMATION OR CONTENT), ABSENCE OF DEFECTS, WHETHER LATENT OR PATENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. ANY SOFTWARE PROVIDED THROUGH THE SUPPLIER OFFERING IS LICENSED AND NOT SOLD.

NO AGENT OF SUPPLIER IS AUTHORIZED TO ALTER OR EXPAND THE WARRANTIES OF SUPPLIER AS SET FORTH HEREIN. SUPPLIER DOES NOT WARRANT THAT: (A) THE USE OF THE SUPPLIER OFFERING WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (B) THE SUPPLIER

OFFERING WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; (C) THE SUPPLIER OFFERING WILL BE ERROR-FREE OR THAT ERRORS OR DEFECTS IN THE SUPPLIER OFFERING WILL BE CORRECTED; OR (D) THE SERVER(S) THAT MAKE THE SUPPLIER OFFERING AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SUPPLIER OFFERING MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. SUPPLIER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.

8. **INDEMNIFICATION.** Customer shall indemnify and hold harmless Supplier and its affiliates, officers, agents, employees, and licensors from claims, suits, actions, demands and proceedings and all losses, damages, costs, expenses (including reasonable attorneys' fees) and liabilities related thereto arising out of or related to Customer's use of the Supplier Offering or Customer's breach of this Agreement. Supplier have the right to control the defense of any claim, action, or matter subject to indemnification by Customer with counsel of Supplier's choosing. Customer shall fully cooperate with Supplier in the defense of any such claim, action, or matter.

9. **PROPRIETARY RIGHTS.** As between Supplier and Customer, all right, title and interest in the Supplier Offering and any other Supplier materials furnished or made available hereunder, and all modifications and enhancements thereof, including, without limitation, all copyright rights, trademark rights, patent rights and other intellectual property rights in each of the foregoing, belong to and are retained solely by Supplier or Supplier's licensors and providers, as applicable.

10. **LIMITATION OF LIABILITY.**

10.1 **No Consequential Damages.** NEITHER SUPPLIER NOR ITS LICENSORS SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOST DATA, BUSINESS INTERRUPTION, LOST PROFITS, LOST REVENUE OR LOST BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUPPLIER OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY SUCH DAMAGES ARISING OUT OF THE LICENSING, PROVISION OR USE OF THE SUPPLIER OFFERING OR THE RESULTS THEREOF. SUPPLIER WILL NOT BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SUPPLIER OFFERING.

10.2 **Limits on Liability.** NEITHER SUPPLIER NOR ITS LICENSORS SHALL BE LIABLE FOR CUMULATIVE, AGGREGATE DAMAGES GREATER THAN AN AMOUNT EQUAL TO THE FEES PAID BY CUSTOMER TO SUPPLIER UNDER THIS AGREEMENT DURING THE PERIOD OF THREE MONTHS PRECEDING THE DATE ON WHICH THE CLAIM FIRST ACCRUED.

**10.3 Essential Purpose.** CUSTOMER ACKNOWLEDGES THAT THE TERMS IN THIS SECTION 10 SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SHALL APPLY EVEN IF AN EXCLUSIVE OR LIMITED REMEDY STATED HEREIN FAILS OF ITS ESSENTIAL PURPOSE WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE.

## **11. TERM AND TERMINATION.**

**11.1 Term.** The term of this Agreement commences on the date the Order is placed and continues through the subscription period set forth in the Order, unless earlier terminated as provided in this Agreement. Except as otherwise specified in the Order, the term of this Agreement shall automatically renew for additional periods equal to the subscription period set forth in the Order unless, prior to the expiration of the then current term, one party gives the other party notice through the SaaS Service interface or other written notice that the noticing party does not want to renew.

**11.2 Termination for Cause.** A party may terminate this Agreement upon written notice to the other party in the event the other party (a) files a petition for bankruptcy or has a petition for bankruptcy filed against it that is not dismissed within sixty (60) days after filing or admits its inability to pay its debts as they mature, makes an assignment for the benefit of its creditors or ceases to function as a going concern or to conduct its operations in the normal course of business and such termination shall occur immediately upon notice; or (b) commits a material breach of any provision of this Agreement and does not remedy such breach within thirty (30) days after receipt of notice from the other party or such other period as the parties may agree.

**11.3 Effects of Termination.** Upon expiration or termination of this Agreement, (a) Customer's use of and access to the Supplier Offering shall cease (subject to the perpetual license to Stock Assets set forth in **Section 2.4**) and (b) all fees and other amounts owed to Supplier shall be immediately due and payable by Customer.

**11.4 Survival.** The termination or expiration of this Agreement for any reason shall not affect a party's rights or obligations that expressly or by their nature continue and survive (including, without limitation, the payment terms and the provisions concerning ownership, limitation on liability, indemnity and the warranty disclaimers).

## **12. MISCELLANEOUS.**

**12.1 Notices.** Supplier may give notice to Customer by means of a general notice through the SaaS Service interface, electronic mail to Customer's e-mail address on record with Supplier, or by written communication sent by first class postage prepaid mail or nationally recognized overnight delivery service to Customer's address on record with Supplier. Customer may give notice to Supplier by written communication sent by first class postage prepaid mail or

nationally recognized overnight delivery service addressed to Greyscalegorilla, Inc., 3320 W. Foster Avenue, #230, Chicago, IL 60625, Attention: Legal. Notice shall be deemed to have been given upon receipt or, if earlier, two business days after mailing, as applicable. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

**12.2 Governing Law.** This Agreement and the rights and obligations of the parties to and under this Agreement shall be governed by and construed under the laws of the United States and the State of Illinois as applied to agreements entered into and to be performed in such State without giving effect to conflicts of laws rules or principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. The parties further agree to waive and opt-out of any application of the Uniform Computer Information Transactions Act (UCITA), or any version thereof, adopted by any state of the United States in any form. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The number of arbitrators shall be one. The seat, or legal place of arbitration shall be Chicago, Illinois in the United States. Notwithstanding the above, nothing in this Agreement shall be deemed as preventing Supplier from seeking injunctive relief (or any other provisional remedy) from any court having jurisdiction over the parties and the subject matter of the dispute as necessary to protect Supplier's name, proprietary information, trade secrets, know-how, or any other intellectual property or proprietary rights.

**12.3 Publicity.** Supplier has the right to reference and use Customer's name and trademarks and disclose the nature of the Supplier Offering provided hereunder in each case in Supplier business development and marketing efforts, including without limitation Supplier's web site.

**12.4 U.S. Government Customers.** If Customer is a Federal Government entity, Supplier provides the Supplier Offering, including related software and technology, for ultimate Federal Government end use solely in accordance with the following: Government technical data rights include only those rights customarily provided to the public with a commercial item or process and Government software rights related to the Supplier Offering include only those rights customarily provided to the public, as defined in this Agreement. The technical data rights and customary commercial software 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 greater rights are needed, a mutually acceptable written addendum specifically conveying such rights must be included in this Agreement.

**12.5 Export.** The Supplier Offering utilizes software and technology that may be subject to United States and foreign export controls. Customer acknowledges and agrees that the



Supplier Offering shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, “**Embargoed Countries**”), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury’s List of Specially Designated Nationals or the U.S. Department of Commerce’s Table of Denial Orders (collectively, “**Designated Nationals**”). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Supplier Offering, Customer represents and warrants that it is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Supplier Offering may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000. Customer agrees to comply strictly with all applicable export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required. Supplier and its licensors make no representation that the Supplier Offering is appropriate or available for use in other locations.

12.6 **General.** Customer shall not assign its rights hereunder or delegate the performance of any of its duties or obligations hereunder, whether by merger, acquisition, sale of assets, operation of law, or otherwise, without the prior written consent of Supplier. Any purported assignment in violation of the preceding sentence is null and void. Subject to the foregoing, this Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties thereto. Except as otherwise specified in this Agreement, this Agreement may be amended or supplemented only by a writing that refers explicitly to this Agreement and that is signed on behalf of both parties. No waiver will be implied from conduct or failure to enforce rights. No waiver will be effective unless in a writing signed on behalf of the party against whom the waiver is asserted. If any of this Agreement is found invalid or unenforceable that term will be enforced to the maximum extent permitted by law and the remainder of this Agreement will remain in full force. The parties are independent contractors and nothing contained herein shall be construed as creating an agency, partnership, or other form of joint enterprise between the parties. This Agreement, including the Order, constitute the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous understandings, representations, discussions, negotiations, and agreements, whether written or oral. Except for payment obligations hereunder, neither party shall be liable to the other party or any third party for failure or delay in performing its obligations under this Agreement when such failure or delay is due to any cause beyond the control of the party concerned, including, without limitation, acts of God, governmental orders or restrictions, fire, or flood, provided that upon cessation of such events such party shall thereupon promptly perform or complete the performance of its obligations hereunder.