

## END USER LICENSE AND SUBSCRIPTION AGREEMENT

This End User License and Subscription Agreement (“Agreement”) governs your use of and subscription to the software, products, materials, media, plug-ins, and services (collectively “Products”) provided by Greyscalegorilla, Inc. (“Licensor”), including through “Greyscalegorilla Plus”. By selecting the “accept” or “approve” checkbox or button upon checkout, or by installing or otherwise using the Products, you agree to be bound by the terms of this Agreement as well as Licensor’s Privacy Policy (“Privacy Policy”) located at <https://greyscalegorilla.com/privacy-policy/>. You agree that this Agreement is enforceable like any written agreement negotiated and signed by you.

### 1. Limited License & Use of the Products

- A. You are granted a non-exclusive, non-transferable, limited license to access and use the Products.
- B. You agree not to reproduce, duplicate, license, copy, sell, gift, transfer, share, resell or exploit access to the Products, use of the Products, or any portion of the Products, including, but not limited to any visual design elements, without the prior express written permission from Licensor.
- C. You agree not to modify, reverse engineer, adapt or otherwise tamper with the Products, including translating into another language, or modify another website so as to falsely imply that it is associated with the Products, Licensor, or any other software, product, or Products provided by Licensor.
- D. You agree that you will not knowingly use the Products in any manner which may infringe copyright or intellectual property rights or in any manner which is unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene or in violation of the terms of this Agreement.
- E. You agree that they will not knowingly use the Products to upload, post, host, or transmit unsolicited bulk email “Spam”, short message service “SMS” messages, viruses, self-replicating computer programs “Worms” or any code of a destructive or malicious nature.
- F. Except for the non-exclusive license granted pursuant to this Agreement, you acknowledge and agree that all Licensor retains all rights, interests, and ownership in and to the Products, and every part, product, intellectual property, media, material, and logo therein. The Products contain copyright and trade secret information, processes, data, material, media, and other proprietary items. Neither the Products, nor Licensor’s likeness, logo, goodwill, or name, shall be used to promote any of your work, products, services, or projects, whether or not such work, products, services, or projects were assisted by or derived from the Products.
- G. Licensor reserves the right at any time, and from time to time, to modify or discontinue, temporarily or permanently, any feature associated with the Products, with or without notice, except that Licensor shall provide you with 30-days’ notice of any modification that materially reduces the functionality of the Products. Continued use of the Products following any modification constitutes your acceptance of the modification; provided however, that you may cancel your subscription within said 30 day notice period and receive a refund of the annual subscription fee prorated based on the number of days left in the current subscription term.

- H. Licensor reserves the right to temporarily suspend access to the Products for operational purposes, including, but not limited to, maintenance, repairs, or installation of upgrades. Licensor shall endeavor to confine planned operational suspensions to minimize disruption to you, but reserves the ability to temporarily suspend operations without notice at any time to complete necessary repairs. In the event of a temporary suspension, Licensor will endeavor to provide updates as to the nature and duration of any temporary suspension. You shall not be entitled to any refund or reimbursement, prorated or otherwise, for any temporary suspension.

## **2. Term**

- A. The term of your subscription for the Products begins on the date you activate your account. The subscription term is for one (1) year.
- B. If you do not properly cancel your account before the expiration of the subscription term, it will automatically renew for the same term length that was most recently in effect and you will be charged accordingly for the entire renewed term.

## **3. Access to the Products**

- A. You are required to provide your full legal name, a valid email address, and any other information reasonably requested by Licensor in order to use the Products.
- B. You will be provided with a unique identifier to access and use the Products ("Username"). The Username shall only be used by you and must not be shared with, or used by, any other person.
- C. Licensor will provide you with a secure method of authentication and accessing its Products. You will be responsible for protecting the security of the Username and passwords, or any other codes associated to the Products, and for the accuracy and adequacy of personal information provided to the Products.
- D. You will implement policies and procedures to prevent unauthorized use of the Username and passwords and will promptly notify Licensor upon suspicion that a Username and password has been lost, stolen, compromised, or misused.
- E. Licensor shall report to you, with all relevant details (except those which could prejudice the security of data uploaded by other customers), any event that Licensor reasonably believes represents unauthorized access to, disclosure of, use of, or damage to your information (a "Security Breach"). Licensor shall make such report within 72 hours after learning of the Security Breach. In the event of a Security Breach, Licensor shall (i) cooperate with you to identify the cause of the breach and to identify any affected information; (ii) assist and cooperate with you in investigating and preventing the recurrence of the Security Breach; (iii) assist and cooperate with you in any litigation or investigation against third parties that you undertake to protect the security and integrity of its information; and (d) use commercially reasonable endeavors to mitigate any harmful effect of the Security Breach.
- F. All access to and use of the Products via mechanical, programmatic, robotic, scripted or any other automated means not provided as part of the Products is strictly prohibited.

## **4. Payment, Refunds, and Subscription Changes**

- A. You agree to provide Licensor with a valid credit card for payment of the applicable subscription fees. All subscription fees are exclusive of all federal, state, provincial, municipal or other taxes which you may be subject to. In addition to any fees, you may still incur charges incidental to using the Products, such as charges for Internet access, data roaming, and other data transmission charges.
- B. By providing Licensor your payment information (e.g. credit card information, bank account information) you are expressly giving Licensor permission to charge you for all fees incurred in connection with your account. Licensor may also use a third party to process the payment. You agree that Licensor can share any credit card and related billing information with said third party payment processor. In addition, you agree to provide Licensor the right to use this information in response to valid legal process, or for the purpose of establishing or protecting Licensor's rights. Licensor does not assume any responsibility for any use or disclosure by any third parties.
- C. Licensor provides you with a 60-day money-back-guaranty whereby you may cancel your subscription for any reason within the first 60 days of your subscription term, including any renewal term, and Licensor shall refund you that term's subscription fee. This refund does not include any reimbursement for any taxes or other fees or charges that you may have incurred or are responsible for.
- D. Except as otherwise expressly provided in this Agreement, no refunds or credits will be issued for partial periods of Products, upgrade or downgrade refunds, or refunds for periods unused with an active subscription, including, but not limited to, instances involving the removal of you as a user or subscriber.
- E. The amount charged on the next billing cycle will be automatically updated to reflect any changes to the subscription, including upgrades or downgrades. You authorize Licensor to apply updated charge amounts.
- F. All prices are subject to change upon notice. Such notice may be provided by an e-mail message, or in the form of an announcement on the Products.
- G. You are responsible for paying all taxes associated with the subscription to the Products. If Licensor has the legal obligation to pay or collect taxes for which you are responsible under this section, the appropriate amount shall be charged to and paid by you, unless you provide Licensor with a valid tax exemption certificate authorized by the appropriate taxing authority.

## **5. Cancellation and Termination**

- A. You are responsible for canceling your subscription. You may cancel your subscription at any time by accessing the Products and cancelling from the settings; however, you will not receive any refund or credit except as otherwise expressly provided for herein. You may be directed to contact support to complete the cancellation. Cancellations shall not be accepted by any other means.
- A. Licensor in its sole discretion has the right to suspend or discontinue providing the Products to you without notice for actions that are (i) in violation of this Agreement or (ii) create a Security Emergency. "Security Emergency" refers to an act by you that (a) could disrupt (i) Licensor's provision of the Products; (ii) the business of other subscribers or users of the Products; or (iii) the network or servers used to provide the Products; or (b) provides unauthorized third party access to the Products.

- B. Upon cancellation or termination, or any reason, all access to any Products shall be immediately suspended, all licenses and rights granted to you relating to the Products shall be revoked, and you are required to immediately destroy all downloaded or printed Products in your possession or control. Notwithstanding the forgoing, in cancellation or termination, all the provisions of this Agreement which operate to protect the rights of Licensor shall continue in full force and effect.
- C. It is understood and agreed that, notwithstanding any other provisions of this Agreement, Licensor has the unequivocal right to obtain timely injunctive relief against you to protect the proprietary rights of Licensor. You agree that in the event that you breach this Agreement, you may be liable for damages as may be determined by a court of competent jurisdiction.

## **6. Use of Data**

- A. Licensor only accesses and uses your uploaded information and data: (i) with your consent; (ii) to address technical problems or handle support issues, and then only in a confidential manner; and (iii) as Licensor believes may be required to permit the normal operation of the Products and comply with applicable law.
- B. Licensor is permitted to collect, monitor, and aggregate anonymous usage-related data and technical-related data in connection with the use of the Products ("Usage Data"). You provide Licensor a worldwide license to host, copy, transmit and display your information and data as is necessary for the normal operation of the Products, in connection with the inter-operation of the Products, and as otherwise noted in this Agreement.
- C. You grant Licensor the ability to use your information to provide notices to you which may be of use or interest to you.
- D. Licensor reserves the right to provide your information or data to third parties as required by law (such as in response to a subpoena or court order), and to cooperate with law enforcement authorities in the investigation of any criminal or civil matter. If Licensor is required by law to make any disclosure of your information and data that is prohibited or otherwise constrained by this Agreement, then Licensor will provide you with written notice (to the extent permitted by law) prior to such disclosure so that you may seek a protective order or other appropriate relief. Subject to the foregoing sentence, Licensor may furnish that portion (and only that portion) of your information or data that it is legally compelled or otherwise legally required to disclose.

## **7. Limitation of Liability**

- A. Except in the case of a violation by Licensor of its express obligations under this Agreement, Licensor shall not be liable to you for any claim, loss, injury, liability, expense, or damage of any kind resulting in any way from the Products.
- B. YOU AGREE THAT THE LIABILITY OF LICENSOR ARISING OUT OF ANY CLAIM IN ANY WAY CONNECTED WITH THE PRODUCTS WILL NOT EXCEED THE SUBSCRIPTION FEE YOU PAID FOR THE SUBSCRIPTION TERM OF WHEN THE CLAIM AROSE. YOU FURTHER AGREE THAT LICENSOR IS NOT AND WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION, ATTORNEY FEES) RELATING TO THIS AGREEMENT. THESE DISCLAIMERS APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN

CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, WHETHER THOSE DAMAGES ARE FORESEEABLE AND WHETHER LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF DAMAGES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY LICENSOR TO YOU AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE FROM AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT.

## **8. Disclaimer of Warranties**

- A. WITH THE SOLE EXCEPTION OF THE EXPRESS TERMS OF ANY GUARANTEE OR “MONEY BACK” GUARANTEE THEN IN EFFECT, THE PRODUCTS ARE MADE AVAILABLE “AS IS”, “WITH ALL FAULTS” AND “AS AVAILABLE.” LICENSOR HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS WITH RESPECT TO ANY PRODUCTS PROVIDED BY LICENSOR. THERE IS NO GUARANTEE THAT ACCESS TO THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ANY DEFECTS WILL BE CORRECTED. LICENSOR MAKES NO WARRANTY THAT THE PRODUCTS, WHEN PROVIDED TO YOU IN DIGITAL OR ELECTRONIC FORMAT, WILL BE COMPATIBLE WITH YOUR COMPUTER AND/OR OTHER EQUIPMENT, OR THAT THE PRODUCTS WILL BE SECURE OR ERROR FREE. NOR DOES LICENSOR MAKE ANY WARRANTY AS TO ANY RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE PRODUCTS. LICENSOR IS NOT LIABLE FOR DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THE USE OF, OR THE INABILITY TO USE, THE PRODUCTS.
- B. Licensor hereby disclaims all warranties of any kind related to your hardware or software and will not be responsible for your inability to access or use the Products due to your hardware or software.

## **9. Indemnification**

- A. You hereby agree to indemnify and hold harmless Licensor from and against any claim, action, proceeding, loss, liability, judgment, obligation, penalty, damage, cost or expense, including attorneys’ fees, which arise from or relate to your breach of any obligation stated in this Agreement, your use of the Products, or your negligent acts or omissions.
- B. Licensor will provide prompt notice to you of any indemnifiable event or loss. You will undertake, at your own cost, the defense of any claim, suit or proceeding with counsel reasonably acceptable to Licensor. Licensor reserves the right to participate in the defense of the claim, suit, or proceeding, at Licensor’ expense, with counsel of Licensor’ choosing.

## **10. Miscellaneous**

- A. Technical support and training are available to you provided you have an active subscription, and is available by email or electronic support ticket, in accordance with Licensor’s then current policies and procedures.

- B. You acknowledge and agree that Licensor may use third party vendors and hosting partners to provide the necessary hardware, software, networking, storage, and related technology required to run the Products.
- C. Licensor may, in its discretion, provide the ability to integrate the Products with third party products and Products that you may use at your option and risk. Access to and use of any third-party products and services are subject to the separate terms and conditions required by the providers of the third party products and services. You agree that Licensor has no liability arising from your use of any integrations or arising from the third party products and services. Licensor can modify or cancel the integrations at any time without notice.
- D. You acknowledge the risk that information stored and transmitted electronically through the subscription and Products may be intercepted by third parties. You agree to accept that risk and will not hold Licensor liable for any loss, damage, or injury resulting from the interception of information.
- E. The failure of either party to enforce any provision hereof shall not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time.
- F. This Agreement constitutes the entire agreement you and Licensor regarding the subject matter herein and governs your use of the Products, superseding any prior agreements between you and Licensor (including, but not limited to, any prior versions of this agreement).
- G. Licensor reserves the right to unilaterally amend this Agreement. In the event of material changes to the Agreement, Licensor will notify you, by email or by other reasonable means, of these changes prior to their enactment. Continued use of the Products after notice will be considered acceptance of any new terms.
- H. You may not assign any of your rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of Licensor, which may be withheld in Licensor's sole discretion. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this Section shall be void and of no effect.
- I. This Agreement and your relationship with Licensor shall be governed exclusively by, and will be enforced, construed, and interpreted exclusively in accordance with, the laws applicable in the State of Illinois and shall be considered to have been made and accepted in the State of Illinois without regard to its conflict of law provisions. Any dispute arising out of, or relating to, this Agreement that has not been resolved after a reasonable attempt by the parties, and which does not directly relate to the: (i) enforcement of our intellectual property rights; or (ii) claim for injunctive relief, shall be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitration shall be conducted in Cook County in the State of Illinois, unless otherwise mutually agreed. Any action outside of the scope of arbitration shall be brought exclusively in courts situated in Cook County in the State of Illinois and you consent to the exclusive jurisdiction of such courts. The parties agree that the prevailing party in any litigation or arbitration shall be entitled to recover reasonable legal fees, costs and disbursements from the non-prevailing party.
- J. In the event that any provision of this Agreement is held illegal, void or ineffective, the remaining portions will remain in full force and effect.

K. This Agreement shall not be construed so as to create any third-party beneficiaries, except as specifically stated herein.