

## CHUTE SAAS TERMS AND CONDITIONS

THESE TERMS AND CONDITIONS, INCLUDING ANY EXHIBITS OR ADDENDA ATTACHED HERETO (THE “T&Cs”), TOGETHER WITH THE APPLICABLE PURCHASE ORDER UNDER WHICH SERVICES ARE ORDERED GOVERNS CHUTE’S PROVISION OF THOSE SERVICES AND CUSTOMER’S USE OF THOSE SERVICES. THE COSTUMER MEANS THE LEGAL ENTITY WHICH ENTERS INTO A PURCHASE ORDER WITH CHUTE SUBJECT TO THESE T&Cs.

### 1. Services.

**1.1 Background.** Chute provides access to its Chute API and Chute Management Platform (as each term is defined in Section 2 below) to allow Customer to integrate Third Party Content and Customer Content (as each term defined in Section 2 below) as further described hereunder. Chute integrates the Chute API with Customer’s content management system (“Customer CMS”) in order to allow Customer to review Third Party Content served by the Chute Management Platform, determine which content is most relevant to Customer, and display such Third Party Content alone or in combination with Customer Content through Customer’s websites, social media sites and applications (“Customer Websites”).

**1.2 Services.** Chute shall provide certain hosting and related services to Customer, which shall include access and a license to the Chute API and Chute Management Platform, (collectively, the “Services”), as specifically set forth in one or more purchase orders (each a “PO”) attached hereto and incorporated herein provided that any change to the terms of these T&Cs within a PO will apply only to the Services described in such PO.

### 2. Intellectual Property

**2.1 License to Chute Management Platform and Chute API.** Subject to the provisions of these T&Cs, and payment of all fees due and owing to Chute, Chute hereby grants Customer a limited, non-exclusive, non-transferable license to access and use the Chute API (i.e. the Chute application programming interface identified in the PO) and the Chute Management Platform (i.e. the Chute software and software platform used by Chute in providing the Services as well as any other products identified in the applicable PO) solely in connection with its use of the Services.

**2.2 Reservation of Rights; Restrictions.** Except for rights expressly granted to Customer herein, Chute shall retain all right, title and interest in and to the Services, the Chute API, and Chute Management Platform including without limitation, all content, concepts, know-how, tools, scripts, code, methodologies, processes, code, or other intellectual property or trade secrets associated with the Chute API, Chute Management Platform, or otherwise pre-existing or independently developed by Chute and any enhancements, modifications, or improvements to the foregoing developed during or independent of the Services (collectively, the “Chute IP”).

Except as expressly permitted herein, Customer shall not (or permit any third party to) directly or indirectly (i) use any of the Chute IP or Chute Confidential Information to create any service, software, documentation or data that is competitive with or similar to any aspect of the Services (ii) disassemble, decompile, reverse engineer or use any other means to attempt to discover any source code in connection with the Services and Chute IP (iii) encumber, sublicense, transfer, rent, lease, time-share or use the Services or Chute IP in any service bureau arrangement or otherwise for the benefit of any third party, (iv) copy, distribute, manufacture, adapt, create derivative works of, translate, localize, port or otherwise modify any aspect of the Services or Chute IP, or (v) use or allow the transmission, transfer, export, re-export or other transfer of any Services, Chute IP, or technology or information it obtains or learns pursuant to these T&Cs.

**2.3 Customer Content.** Customer shall retain all right, title and interest in (i) the Customer Websites and (ii) all content, trademarks, or intellectual property of Customer contained therein or otherwise provided to Chute or accessed through the Chute API and Chute Management Platform. Customer grants Chute a non-exclusive, royalty-free license to use, host, distribute, reproduce, perform, display, modify and create derivative works of Customer Content to the extent reasonably necessary to perform Services as set forth herein and the applicable PO.

**2.4 Third Party Content.** All third party photographs, images, materials, descriptions, content, videos, audio files, text files, information, code, or other content, trademarks, intellectual property, handles or other data (“Third Party Content”) that is accessed by Customer through use of the Chute API and Chute Management Platform shall be retained by the applicable third party rights holder and subject to the rights of such third party and any applicable third party terms and conditions (e.g. Facebook, Twitter, Instagram, Pinterest YouTube, Tumblr, etc.) governing the use or access to such Third Party Content. Customer acknowledges and agrees that Customer shall be solely liable for the clearance and use of any such Third

Party Content in connection with Customer's business and Web Sites including without limitation, any copyrights, trademarks, right of privacy or publicity or other rights and compliance with any applicable third party terms and conditions.

### **3. Confidentiality, Privacy, and Data.**

**3.1 Mutual Confidentiality.** Each party agrees that the business, technical and financial information, that is designated in writing as confidential, or that should reasonably be considered confidential given the nature of the information and/or the manner of disclosure, shall be the confidential property of the disclosing party and its licensors ("Confidential Information"). Confidential Information does not include information that (i) is previously rightfully known to the receiving party without restriction on disclosure; (ii) is or becomes known to the general public, through no act or omission on the part of the receiving party; (iii) is disclosed to the receiving party by a third party without breach of any separate nondisclosure obligation; (iv) is independently developed by the receiving party; and (v) is required to be disclosed pursuant to a judicial order or third party subpoena provided the receiving party provide written notice to the disclosing party in order for the disclosing party to seek an appropriate remedy and only disclose the minimum information required by the order or subpoena.

**3.2 Privacy and Data.** Customer shall be solely responsible for any collection and usage of personally identifiable information ("PII") via the Customer Websites, directly via Customer's utilizing the Services, or Chute IP, and any obligations in connection therewith, including without limitation complying with all data security and privacy laws and regulations and providing terms of use and privacy policies for all Customer Websites or third party web sites or applications. Customer acknowledges and agrees that Chute may collect and retain aggregate non-identifiable data derived from performance of the Services for its own business purposes for Customer and other Chute customers.

**4. Payment.** Customer shall pay Chute all fees and expenses as set forth in the applicable PO within fifteen (15) days of the date of invoice from Chute. For any fees due more than thirty (30) days from the date of the invoice that are not disputed in good faith by Customer, Chute may charge interest at the highest prevailing rate and/or suspend Services until such payments are made by Customer. Customer shall also be responsible for the reasonable costs incurred by Chute (including reasonable attorney's fees) for payments not made or disputed in good faith within thirty (30) days from the date of the invoice.

### **5. Representations, Warranties, and Indemnity**

**5.1 Mutual.** Each party represents and warrants that: (i) it is a duly organized and validly existing under the laws of the jurisdiction in which it is organized; (ii) it has full power and authority, and has obtained all approvals, permissions and consents necessary, to enter into these T&Cs and to perform its obligations hereunder; (iii) these T&Cs is legally binding upon it and enforceable in accordance with its terms; and (iv) the execution, delivery and performance of these T&Cs does not and will not conflict with any agreement, instrument, judgment or understanding, oral or written, to which it is a party or by which it may be bound.

**5.2 Customer.** Customer represents and warrants that (i) the Customer Content, and Customer's products, services, and Customer Web Sites will not violate the intellectual property or other rights of any third party and nothing contained therein could reasonably be considered defamatory, libelous or the like or constitute false advertising; (ii) it shall not rent, sell, license, lease or otherwise commercially exploit or make available the Services or the Chute IP to any unauthorized user or otherwise use, modify, adapt, or combine the Services or the Chute IP in an infringing or unauthorized manner; (iii) it shall comply with all applicable federal, state, and local laws, rules and regulations including without limitation, all privacy and data security laws and the terms and conditions of all applicable third party web sites, platforms or applications; and (iv) Customer's use of any Third Party Content will not violate any applicable federal, state, and local laws, rules or regulations or the rights of any third party, including without limitation any intellectual property, privacy and/or publicity rights.

**5.3 Chute.** Chute represents and warrants that (i) the Services will be provided in a professional and workmanlike manner; (ii) to the best of its knowledge and at the time of delivery, the Chute API and Chute Management Platform as delivered by Chute do not contain any Trojan horses, worms, or undocumented disabling devices; and (iv) the Chute API and Chute Management Platform as developed by Chute shall not infringe on the copyright, trademark, right of privacy or publicity, or trade secret rights of any third party.

**5.4 Disclaimers.** EXCEPT AS SET FORTH HEREIN, CHUTE DOES NOT WARRANT THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR RESULT IN ANY OUTCOME, OR THAT THEIR OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE. CHUTE HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES THAT CHUTE HAS NO CONTROL OVER THIRD PARTY CONTENT, INFORMATION OR MATERIALS INCLUDING WITHOUT LIMITATION, ANY USER-GENERATED OR

PRIVACY DISCLOSURES ON THIRD PARTY SITES OR THIRD PARTY DISCLOSURES GENERALLY. AS SUCH, CHUTE SHALL NOT BE RESPONSIBLE FOR ENSURING THE CONTENT OR ACCURACY OF WHAT ANY THIRD PARTY PUBLISHES OR FOR ANY OTHER THIRD PARTY ACTIONS. ADDITIONALLY, CHUTE SHALL NOT BE RESPONSIBLE FOR ANY DELAYS OR OUTAGES CAUSED BY ANY THIRD PARTY PLATFORMS. FURTHER, CHUTE MAKES NO REPRESENTATIONS OR WARRANTIES AND SHALL ASSUME NO LIABILITY AMOUNTS OR INDEMNITY OBLIGATIONS WITH RESPECT TO ENSURING THAT CUSTOMER'S USE OF THE SERVICES OR CHUTE IP COMPLY WITH ANY LAWS OR REGULATIONS OUTSIDE THE UNITED STATES AND CUSTOMER SHALL BE SOLELY LIABLE FOR SUCH COMPLIANCE.

**5.5 Indemnity.** Each party shall defend, indemnify and hold harmless the other party from and against any costs, damages, liabilities (including reasonable attorneys fees and expenses) in connection with any third party claim, action, suits, regulatory investigations or subpoenas arising from such party's (i) breach of its representations, warranties or covenants hereunder; and (ii) gross negligence or willful misconduct of such party, its employees or agents.

**6. LIMITATION ON LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, REVENUES, PROFITS AND GOODWILL. EXCEPT FOR CHUTE'S INDEMNITY OBLIGATIONS TO THIRD PARTIES, CHUTE'S AGGREGATE LIABILITY SHALL NOT EXCEED THE FEES PAID BY CUSTOMER TO CHUTE UNDER ANY APPLICABLE PO IN THE PREVIOUS TWELVE (12) MONTHS.

**7. Term; Termination.**

**7.1 Term.** Unless otherwise set forth in the applicable PO, these T&Cs shall commence on the Effective Date and shall continue in full force and effect for a period of one (1) year, unless earlier terminated as set forth in Section 7.2. The T&Cs shall automatically renew for successive one (1) year terms unless a party notifies the other party in writing of its intent not to renew the T&Cs at least sixty (60) days prior to the expiration of the then-current term. The initial term and any renewal terms shall be referred to collectively as the "Term".

**7.2 Termination.** These T&Cs may be terminated if the other party materially breaches a provision of these T&Cs and fails to cure such breach within thirty (30) days after receiving written notice of such breach from the non-breaching party. Chute also reserves the right to immediately terminate these T&Cs upon Customer's failure to pay amounts due within thirty (30) days from the date of invoice.

**7.3 Effects of Termination.** Upon any expiration or termination of any PO or these T&Cs, all corresponding rights, obligations and licenses of the parties shall cease, except that (a) all obligations that accrued prior to the effective date of termination (including without limitation, all payment obligations and non-cancellable fees) shall survive; (b) Customer shall not access the Chute Management Platform or make calls to the Chute API (if Customer continues to access the Chute Management Platform or make calls to the API, then Chute reserves, without limiting its rights or remedies, the right to continue to charge Customer at its then current rates); (c) Chute shall immediately return all Customer Content and Confidential Information upon request. Additionally, in the case of any termination by Customer outside the scope of Section 7.2 or in the case of any termination by Chute pursuant to Section 7.2, all payment obligations shall accelerate and become due immediately upon such termination.

**8. Miscellaneous.**

**8.1 Independent Contractors.** The parties shall be independent contractors and nothing herein will constitute either party as the employer, employee, agent or representative of the other party, or both parties as joint venturers or partners for any purpose.

**8.2 Assignment.** These T&Cs and the rights and obligations hereunder may not be assigned, in whole or in part, by either party without the other party's written consent, not to be unreasonably withheld. However, without consent, either party may assign these T&Cs to any successor to all or substantially all of its business that concerns these T&Cs (whether by sale of assets or equity, merger, consolidation or otherwise). These T&Cs shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the parties hereto.

**8.3 Force Majeure.** In the event that either party is prevented from performing, or is unable to perform, any of its obligations under these T&Cs due to any force majeure (i.e. God, fire, natural disaster, accident, riots, acts of government, acts of war or terrorism, shortage of materials or supplies, failure of transportation or communications or of suppliers of goods or services, changes to any third party platforms (e.g. Instagram, Twitter, etc.), any usage restrictions imposed by any such third party platforms, or any delays or outages arising in connection with such third party platforms, the malicious acts of third parties (e.g. cyber attacks), or any other cause beyond the reasonable control of such party), the affected party shall give written notice

thereof to the other party and its performance shall be extended for the period of delay or inability to perform due to such occurrence.

**8.4. Governing Law.** These T&Cs shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of law principles. In the event of a dispute, the parties hereby submit to the exclusive jurisdiction of the state and federal courts located in San Francisco, California.

**8.5 Entire Agreement.** These T&Cs (including the PO(s)) constitutes the entire agreement, and supersedes all prior negotiations, understandings or agreements (oral or written), between the parties regarding the subject matter of these T&Cs (and all past dealing or industry custom). No change, consent or waiver under these T&Cs will be effective unless in writing and signed by the party against which enforcement is sought. The failure of either party to enforce its rights under these T&Cs at any time for any period will not be construed as a waiver of such rights, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy. If any provision of these T&Cs is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that these T&Cs will otherwise remain in full force and effect and enforceable.