

Terms of Service

Effective date: June 12, 2023

Customer Agreement

This Agreement consists of the General Terms, the applicable Product Specific Terms, and any additional terms CHRT presents when an order is placed. The Agreement takes effect when Customer accepts the General Terms, and the individual who accepts these General Terms represents that they are authorized to enter into this Agreement on behalf of Customer.

General Terms

These General Terms apply to all of Customer's orders under this Agreement. Capitalized terms have the meanings given under Definitions.

A. License to use CHRT Products

1. **License grant.** Products are licensed and not sold. Subject to Customer's compliance with this Agreement, CHRT grants to Customer a nonexclusive and limited license to install and use the Products ordered as provided in the applicable Product Specific Terms and this Agreement. The licenses are only for Customer's internal business purposes and are non-transferable except as expressly permitted under this Agreement or applicable law.
2. **Duration of licenses.** Licenses expire at the end of the applicable Subscription Term unless renewed.
3. **Accounts.** Customer may assign each Subscription License to one individual End User for use or access on any number of devices. End User accounts may not be shared by individuals.
4. **End Users.** Customer controls access to and use of the Products by End Users. Customer is responsible for End Users' use.
5. **Product Specific Terms.** Product Specific Terms apply to Products, such as CHRT Data Service, CHRT Journal Service, and CHRT Scanner Service. If there is a conflict between the Product Specific Terms and the General Terms, the Product Specific Terms apply for that Product.
6. **Previews.** Previews are provided "AS-IS", "WITH ALL FAULTS" and "AS AVAILABLE". CHRT may change or discontinue Previews at any time without notice.
7. **Product changes.** CHRT has the right to make changes to the Products. CHRT may provide additional terms that apply to Customer's use of updates, new features or related software.
8. **Affiliates.** Customer's Affiliates may use the Products under this Agreement. Customer is responsible for its Affiliates' use, and Customer has the sole right to enforce this Agreement.
9. **Compliance with laws.** Customer's use of the Products must not violate any applicable laws, including copyright or trademark laws, export control laws and regulations, including laws and regulations in its jurisdiction.
10. **Reservation of rights.** Products are protected by copyright and other intellectual property laws and international treaties. CHRT reserves all rights not expressly granted in this Agreement, and no rights are granted or implied by waiver or estoppel.

11. **Feedback.** Feedback by Customer is voluntary and may be used by CHRT for any purpose without obligation of any kind.
12. **Restrictions.** Unless expressly permitted in this Agreement or by law, Customer may not:
 - reverse engineer, decompile, or disassemble any Product, or try to do so;
 - run, upgrade or downgrade, or transfer parts of a Product separately at different times or on different devices;
 - install, use, or distribute other software or technology in any way that makes CHRT's intellectual property or technology subject to any other license terms;
 - work around technical limitations in a Product or restrictions in Product documentation; or
 - sell, rent, lease, sublicense, distribute, or lend any Products (including data provided as part of an Online Service) to others, in whole or in part, or host Products (including data provided as part of an Online Service) for use by others.

B. Data Protection

1. **Personal Data.** Customer and CHRT will comply with applicable data protection laws.

C. Confidentiality

1. **Existing NDA.** If the parties have entered into a non-disclosure agreement, those terms apply instead of this confidentiality section.
2. **Confidential Information.** "Confidential Information" is non-public information in any form that is marked as "confidential" or that a reasonable person should understand is confidential. This includes, but is not limited to, Customer Content, the terms of this Agreement and Customer's account authentication credentials. Confidential Information does not include information that which:
 - becomes publicly available without a breach of a confidentiality obligation;
 - was received lawfully from another source without a confidentiality obligation;
 - is independently developed; or
 - is Feedback.
3. **Protection of Confidential Information.** Each party will take reasonable steps to protect the other's Confidential Information. A party will only use the other party's Confidential Information as part of the parties' business relationship. Neither party will disclose Confidential Information to third parties. A party may only share Confidential Information with a party's Representatives on a need-to-know basis, under nondisclosure obligations at least as protective as this Agreement. Each party remains responsible for the use of Confidential Information by its Representatives. A party must promptly notify the other party if it discovers any unauthorized use or disclosure.
4. **Disclosure required by law.** A party may disclose the other's Confidential Information if required by law, but only after it notifies the other party (if legally permissible) so that the other party can seek a protective order.
5. **Residual information.** Neither party is required to restrict its Representatives in other work assignments if they have had access to Confidential Information. Each party agrees that the use of information retained in Representatives' unaided memories in the development or deployment of the parties' respective products or services does not create liability under this Agreement or trade secret law.
6. **Duration of confidentiality obligation.** These confidentiality obligations apply (1) for Customer Content, until it is deleted from the Online Services; and (2) for all other Confidential Information, for a period of five years after a party receives the Confidential Information.

D. Warranties

1. Limited warranties and remedies.

- **Online Services.** CHRT warrants that the Online Services will perform in accordance with the applicable SLA during Customer's use. Customer's remedies for breach of this warranty are described in the SLA. If no SLA is provided, no warranty is conferred.
- **Software.** CHRT warrants that the Online Service software will perform substantially as described in the applicable Product documentation for the duration of a Customer's Subscription License for that Online Service. If it does not and Customer notifies CHRT within the warranty term, CHRT will at its option (a) return the price Customer paid for the software license, (b) return the pro-rated (at a daily interval and beginning on the day of Customer's notice to CHRT) price Customer paid for the remainder of the term of the software license, or (c) repair or replace the software.

2. **Exclusions.** The warranties in this Agreement do not apply to problems caused by accident, abuse, or use inconsistent with this Agreement, including failure to meet minimum system requirements. These warranties do not apply to Previews.

3. **Disclaimer.** Except for the limited warranties above and subject to applicable law, CHRT provides no other warranties. It disclaims any other express, implied or statutory warranties, including warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.

E. Third party claims

1. The parties will defend each other against third party claims described in this section and will pay the amount of any resulting adverse final judgment or approved settlement, but only if the defending party is promptly notified in writing of the claim and has the right to control the defense and any settlement of it.
2. The party being defended must provide the defending party with all requested assistance, information, and authority. The defending party will then reimburse the other party for reasonable out-of-pocket expenses it incurs in providing such assistance.
3. This section describes the parties' sole remedies and entire liability for such claims.
 - **By CHRT.** CHRT will defend Customer against any third-party claim that a Product made available by CHRT for a fee and used within the scope of this Agreement (unmodified as provided by CHRT and not combined with anything else), misappropriated a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party. If CHRT is unable to resolve a claim of misappropriation or infringement, it may, at its option, either (1) modify or replace the Product with a functional equivalent or (2) terminate Customer's license and refund any license fees (either in full or pro-rated at a daily interval and beginning on the day of Customer's notice to CHRT), including amounts paid in advance for any usage period after the termination date. CHRT will not be liable for any claims or damages due to Customer's continued use of a Product after being notified to stop due to a third-party claim.
 - **By Customer.** To the extent permitted by applicable law, Customer will defend CHRT and its Affiliates against any third-party claim that: (1) any Customer Content misappropriated a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party; or (2) Customer's use of any Product, alone or in combination with anything else, violates the law or harms a third party.

F. Limitation of liability

1. Each party's maximum, aggregate liability to the other under this Agreement is limited to direct damages finally awarded in an amount not to exceed the following:
 - **Products.** For Products ordered on a subscription basis, CHRT's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Product during the 12 months before the incident.
 - **Previews.** For Previews, CHRT's maximum liability is limited to US \$500 or the amount paid by Customer to CHRT during the 12 months before the incident, whichever is lower.
 - **Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, or loss of use, loss of profits, or interruption of business; however caused or on any theory of liability.
 - **Exceptions.** No limitation or exclusions will apply to liability arising out of either party's (1) confidentiality obligations (except for liability related to Customer Content, which is subject to the above limitation for Products); (2) defense obligations above; or (3) violation of the other party's intellectual property rights.

G. Pricing and payment

1. **Fees.** Customer agrees to pay fees in full, up front and, if invoiced, within thirty (30) days of the invoice date. Amounts payable are non-refundable, except as stated in this Agreement regarding Product warranty and third-party claims. If billed based on usage, CHRT will invoice according to the billing model described in the Product documentation.
2. **Late payment.** If Customer fails to pay fees on time, CHRT has the right to charge 2% monthly interest on past due amounts as allowed by law. CHRT also has the right to charge Customer for all expenses of recovery, to terminate the applicable order, turn off access, and to take any other action at law.
3. **Taxes.** Customer is solely responsible for all taxes, fees, duties, and governmental assessments (except for taxes based on CHRT's net income) that are imposed or become due in connection with this Agreement. If any taxes are required to be withheld on payments invoiced by CHRT, Customer may deduct such taxes from the amount owed and pay them to the appropriate taxing authority, but only if Customer promptly provides CHRT an official receipt for those withholdings and other documents reasonably requested to allow CHRT to claim a foreign tax credit or refund. Customer will ensure that any taxes withheld are minimized to the extent possible under applicable law.

H. Term and termination

1. **Term.** This Agreement is effective until terminated by a party, as described below.
2. **Termination without cause.** Either party may terminate this Agreement without cause on 30 days' notice. Licenses granted on a subscription basis will continue for the duration of the Subscription Term, subject to the terms of this Agreement.
3. **Termination for cause.** Without limiting other remedies, either party may terminate this Agreement for material breach immediately if the other party fails to cure a curable breach within a 30-day notice period. Upon such termination:
 - All licenses granted under this Agreement will terminate immediately.
 - All amounts due under any unpaid invoices will become due and payable immediately.
 - If CHRT is in breach, Customer will be reimbursed for any prepaid unused fees.

4. **Termination for regulatory reasons.** CHRT may modify, discontinue, or terminate a Product in any country or jurisdiction where there is any current or future government regulation, obligation, or other requirement, that (1) is not generally applicable to businesses operating there; (2) presents a hardship for CHRT to continue offering the Product without modification; or (3) causes CHRT to believe these terms or the Product may conflict with any such regulation, obligation, or requirement. If CHRT terminates a subscription for regulatory reasons, Customer will receive, as its sole remedy, a reimbursement for any prepaid, unused subscription fees.

I. Miscellaneous

1. **Independent contractors.** The parties are independent contractors. Customer and CHRT may develop products independently without using the other's Confidential Information.
2. **Amendments.** CHRT may require Customer to accept revised or additional terms before processing a new order. Any additional or conflicting terms and conditions presented by Customer are expressly rejected and will not apply.
3. **Order of precedence.** Conflicting terms in the Product Specific Terms take precedence over these General Terms as to the applicable Products. The parties may agree on changes to Section G "Pricing and payment" and Section I.11 "Applicable law and venue" by a signed order form. Other than that, these General Terms will take precedence over any conflicting terms in other documents.
4. **Assignment.** Either party may assign this Agreement to an Affiliate but it must notify the other party in writing of the assignment. CHRT may also assign its rights to receive payment and enforce Customer's payment obligations. Any other assignment of this Agreement must be approved by the other party in writing. Such notification to CHRT shall be made to the president or account manager of CHRT. Any attempted assignment without required approval will be void.
5. **Compliance with trade laws.** The parties acknowledge that the Products may be subject to U.S. and other countries' export jurisdictions. Each party will comply with all laws and regulations applicable to the import or export of the Products, including, but not limited to, the U.S. Export Administration Regulations, International Traffic in Arms Regulations, and sanctions regulations administered by the U.S. Office of Foreign Assets Control ("trade laws"). Customer will not take any action that causes CHRT to violate U.S. or other applicable trade laws. If Customer learns of a potential violation of trade laws relating to the performance of this Agreement, or a potential violation of the terms in this subsection, it will alert CHRT as soon as possible, but in no event more than 14 days after acquiring this knowledge. CHRT may suspend or terminate this Agreement to the extent that it reasonably concludes that performance would cause it to violate U.S. or other applicable trade laws, including those described above, or put it at risk of becoming the subject of economic sanctions under such trade laws.
6. **Severability.** If any part of this Agreement is held to be unenforceable, the rest of the Agreement will remain in full force and effect.
7. **Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.
8. **No third-party beneficiaries.** This Agreement does not create any third-party beneficiary rights except as expressly provided by its terms.

9. **Survival.** All provisions survive termination of this Agreement except those requiring performance only during the term of the Agreement.
10. **Notices.** Notices to CHRT may be submitted via email to (support [at] chrt [dot] com). If Customer wishes to formally service notice on CHRT, it must be made through CHRT's registered agent:

CHRT
c/o registered agent
address forthcoming

Notices must be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date, or date on the courier confirmation of delivery. Notices to Customer will be sent to the individual at the address Customer identifies on its account as its contact for notices. CHRT may send notices and other information to Customer by email or other electronic form.

11. **Applicable law and venue.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas and federal laws of the United States. Any legal action or proceeding will be brought exclusively in the federal or state courts located in the South Central District of Texas. The parties consent to personal jurisdiction and venue there.

The above choices of venue do not prevent either party from seeking injunctive relief in any jurisdiction with respect to a violation of intellectual property rights or confidentiality obligations.

The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement.

12. **CHRT Affiliates and contractors.** CHRT may perform its obligations under this Agreement through its Affiliates and use contractors to provide certain services. CHRT remains responsible for their performance.
13. **Government procurement rules.** By accepting this Agreement, Customer represents and warrants that (1) it has complied and will comply with all applicable government procurement laws and regulations; (2) it is authorized to enter into this Agreement; and (3) this Agreement satisfies all applicable procurement requirements.

J. Definitions

- "Affiliate" means any legal entity that controls, is controlled by, or is under common control with a party. In this context control means ownership of more than a 50% interest in an entity.
- "Agreement" means the CHRT Customer Agreement as described in this Terms of Service document.
- "Content" means text, data, software, images, and any other materials that are displayed or otherwise made available through the Online Service.
- "Customer" means the entity that has entered into this Agreement.
- "Customer Content" means Content that Customer creates, owns, or to which Customer holds the rights.
- "End User" means any person or machine account that Customer permits to use a Product or access Customer Content.
- "Feedback" means a comment or suggestion volunteered by a party about the other party's business, products, or services.

- "Online Service" means the CHRT-hosted service to which Customer may subscribe under this Agreement.
- "Previews" means Products provided for preview, evaluation, demonstration or trial purposes, or pre-release versions of the Products.
- "Product" means all software, Online Services, and Additional Products and features that CHRT offers, including Previews, updates, patches, bug fixes, data (such as market data and trading data), and support provided by CHRT.
- "Product Specific Terms" means the additional product terms that apply to Products available under this Agreement.
- "Representatives" means a party's employees, Affiliates, contractors, advisors and consultants.
- "Service" means any applications, software, products, and services provided by CHRT, including any Previews.
- "SLA" means CHRT Online Services SLA which specifies the minimum service level for the Online Services.
- "Subscription License" means the license assigned to an End User.
- "Subscription Term" means the license period agreed between the parties when the Products are ordered.

K. License

1. **License.** This Terms document is licensed under the Creative Commons Zero license found [here](#).