

Client Master Services Agreement

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This Master Services Agreement (the “**Agreement**”) is entered into between “**SUPERCHARGEIN LLC d/b/a FotoCuentos o Imagica**” (“**Company**” and/or “**we**”) and the entity that has either executed an Order that references and incorporates this Agreement by reference or is otherwise using the Services (“**Customer**” and/or “**you**”), and governs Customer’s access to and use of the Services. This Agreement constitutes the complete understanding between the parties on the subject matter herein and is effective upon the earlier of: (a) the date that the Order incorporating this Agreement is fully executed by the parties, (b) Customer clicks an “I accept” or similar action referencing this Agreement, or (c) Customer’s initial access to and use of the Services (“**Effective Date**”). By entering into an Order and/or otherwise accessing or using the Services, Customer agrees to be bound by the terms and conditions of this Agreement.

By entering this Agreement you: (1) represent and warrant that you are at least 18 years of age, or have otherwise reached the age of “majority” where you reside, and that you have the right, power and authority to enter into this Agreement, (2) represent and warrant that you have the right, power and authority to enter into this Agreement on behalf of Customer, and (3) understand, if using the Services for personal use, that all references to “Customer” are to you as in individual.

Capitalized terms not otherwise defined in this Agreement will have the respective meanings assigned to them in Section 18.

1. Scope of Services

- 1.1. **Use of the Services.** Subject to the applicable Order and this Agreement, Company hereby grants to Customer the right to access and use the Services in accordance with the Documentation during the Term, solely for Customer’s business or personal use. Company reserves the right to modify, suspend, or discontinue the Services, in whole or in part, at any time without notice.
- 1.2. **Access to Services.** Customer may access the Services via its own internet connection and Customer must provide all equipment and software necessary for such connection, including but not limited to, applicable application program interfaces that have sufficient bandwidth to facilitate the Services. Customer is solely responsible for any fees, including internet connection

fees, that Customer incurs when accessing the Services, excluding those necessary for Company to provide the Services generally.

- 1.3. **Users.** Customer may grant its employees, agents, contractors, or other individuals who are authorized by Customer to access and use the Services on Customer's behalf, subject to the terms and conditions of this Agreement (each a "**User**"). Customer is responsible for ensuring that all Users comply with the terms and conditions of this Agreement, maintaining the confidentiality of all User access credentials, and Customer shall be liable for any breach of this Agreement by any User. Customer shall promptly notify Company of any unauthorized use of the Services, any breach of security, or any other actual or suspected violation of this Agreement by a User and shall cooperate with Company in any investigation or enforcement action related to such unauthorized use.
- 1.4. **Support Services.** Company shall provide Customer with technical support services during the term of this Agreement in accordance with Company's then-current support policies ("**Support Services**") as may be detailed on the Site. Support Services exclude issues arising from Customer's misuse, improper use, or unauthorized modification of the Services.
- 1.5. **Availability.** Company shall use commercially reasonable efforts to ensure that the Services are Available and accessible to Customer at least 99.5% of the time during each calendar month (the "**Availability Standard**"), excluding scheduled maintenance, emergency maintenance, and circumstances beyond Company's reasonable control, such as Force Majeure Events, internet service provider failures, integrated technology provider failures, or delays, or denial of service attacks. Availability shall be calculated based on Company's system monitoring data, and any disputes regarding availability shall be resolved based on such data.
- 1.6. **Providers.** Company uses third-party hosting providers, other service providers and Affiliates to support the general provision of the Services to all of its customers, ie: ISPs, third party ticketing services, etc. Company reserves the right to engage and substitute such providers as appropriate, provided that Company: (a) remains responsible to Customer for the provision of the Services and (b) is liable for the actions and omissions of such providers taken in the provision of the Services.
- 1.7. **Trial and Beta Access.**
 - 1.7.1. **Trials.** To the extent Customer has entered into a trial of the Services via an Order or by accessing the Services without an executed Order ("**Trial**"), such Trial will commence on the day that Customer is provided with access to the Trial and continues for the period agreed upon pursuant to the Order or as otherwise agreed to at the time of entering the Trial (the "**Trial Period**").
 - 1.7.2. **Beta Access.** From time to time, Company may offer Customer new "beta" features or tools which Customer may choose to use prior to any potential general commercial release in the Services ("**Beta Use**"). Notwithstanding anything to the contrary herein, such features or tools are offered solely for experimental purposes and without warranty of any kind, and may be modified or discontinued at Company's sole discretion.

2. **Content and Data.**

- 2.1. **Customer Content.** To facilitate Customer's use of the Services, Customer will upload images, data and other content to the Services directly for processing (collectively "**Customer Content**"). As between the parties, Customer retains all right, title, and interest in and to its Customer Content, including without limitation all Intellectual Property Rights therein. For clarity, no Customer Content is created by the Services. Customer hereby grants to Company a non-exclusive, royalty-free, worldwide license during the term of this Agreement to use, reproduce, modify, display, perform, process, and distribute Customer Content for the purpose of providing

the Services to Customer and as otherwise permitted under this Agreement. Customer represents and warrants that (a) it has all necessary rights, consents, and permissions to provide Customer Content to Company for use in connection with the Services; (b) Customer Content does not and will not infringe or misappropriate any third-party Intellectual Property Rights or violate any Applicable Laws; (c) Customer Content shall not contain any Sensitive Data; and (d) Customer Content does not and will not contain any viruses, malware, or other harmful or malicious code.

- 2.2. **Usage Data.** Company may collect, store, and analyze data regarding Customer's use of the Services, including access, usage patterns, performance, etc. ("**Usage Data**"), to provide, monitor, analyze the Services, including Support Services, develop new features or functionality, identify usage trends, and provide personalized recommendations and insights to Customer and its Users. Company may aggregate Usage Data from other customers in a non-identifiable manner for marketing, industry analysis, and new product development. Company shall maintain appropriate safeguards to protect the confidentiality, integrity, and availability of Usage Data in accordance with this Agreement. Customer acknowledges Company's ownership of Usage Data. For clarity, no Customer Content is included in Usage Data.

3. **Customer Restrictions and Responsibilities.**

- 3.1. **General Restrictions.** Customer shall not, and shall ensure that its Users do not, directly or indirectly: (a) use the Services for any purpose other than as expressly permitted under this Agreement, including to make competitive products or features; (b) copy, modify, or create derivative works of the Services, in whole or in part; (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code or underlying ideas or algorithms of the Services; (d) rent, lease, sublicense, distribute, sell, or otherwise transfer the Services to any third party; (e) remove, alter, or obscure any proprietary notices or labels on the Services, including copyright and trademark notices; (f) use the Services, including making requests or prompting to lead to Output, in a manner that would directly or indirectly lead to violation of any Applicable Law, including Intellectual Property Rights, privacy rights, or rights of publicity; (g) use the Services to transmit, store, or process any data or content that is fraudulent, defamatory, harassing, obscene, threatening, or otherwise unlawful or tortious; (h) interfere with or disrupt the integrity or performance of the Services or the data contained therein; (i) attempt to gain unauthorized access to the Services or their related systems or networks; (j) share, transfer, or allow access to the Services to or by any unauthorized third party, including any direct competitors of Company; or (k) use the Services to develop or provide any product or service that is competitive with the Services.
- 3.2. **Compliance with Laws.** Customer shall be responsible for ensuring that its use of the Services complies with all Applicable Laws, regulations, and governmental orders, including those related to data privacy, data protection, and export control. Customer shall promptly notify Company if it becomes aware of any violation of such Applicable Laws in connection with its use of the Services.
- 3.3. **Investigation.** Company reserves the right to suspend access to the Services to any User for whom we have reasonable belief is in violation of any of the rights or restrictions contained in this Section 3. Company shall work with Customer in good faith to investigate and resolve the suspected violation and use commercially reasonable efforts to (i) notify Customer ahead of such suspension, except in emergency situations, and (ii) restore access promptly following such investigation and remediation of the violation.

4. **Orders.**

- 4.1. **Ordering Process.** Customer may purchase subscriptions to the Services either through the designated online signup process on the Site, or by executing an Order or other written agreement that references this Agreement and specifies the applicable Fees, subscription term, and any additional terms and conditions (each an "**Order**"). Each Order shall be deemed a part of this Agreement and shall be subject to its terms and conditions.

- 4.2. **Automatic Renewals.** Unless otherwise specified in an Order, each subscription to the Services shall automatically renew for additional renewal terms equal in length to the initial subscription term, unless either party provides written notice of its intent not to renew at least thirty (30) days prior to the expiration of the then-current subscription term. The Fees for each renewal term shall be the same as the fees for the immediately preceding term, unless Company provides Customer with written notice of a fee increase at least sixty (60) days prior to the expiration of the then-current term, in which case the increased fees shall apply to the renewal term.

5. Payment Terms

- 5.1. **Fees.** Customer shall pay to Company the Fees for the Services as set forth in the applicable Order. All Fees are non-refundable except as expressly provided in this Agreement.
- 5.2. **Invoicing and Payment.** Company shall invoice Customer for the Services as specified in the applicable Order. If the Order does not specify a billing schedule, Company shall invoice Customer in advance on a monthly basis. Customer shall pay all invoiced amounts within thirty (30) days of the invoice date, unless otherwise specified in the applicable Order. Customer shall make all payments in U.S. dollars.
- 5.3. **Late Payments.** Any undisputed amount not paid when due shall accrue interest at a rate of one and one-half percent (1.5%) per month or the maximum rate permitted by Applicable Law, whichever is greater, from the due date until paid in full. Customer shall reimburse Company for all reasonable costs and expenses, including attorneys' fees, incurred in collecting any overdue amounts.
- 5.4. **Disputed Amounts.** If Customer disputes any portion of an invoice in good faith, Customer shall notify Company in writing within fifteen (15) days of the invoice date, specifying the nature of the dispute and the amount in dispute. The parties shall work in good faith to resolve the dispute promptly. Customer shall pay any undisputed portion of the invoice in accordance with the payment terms set forth in this Section 5.
- 5.5. **Taxes.** All Fees payable under this Agreement are exclusive of any applicable taxes, levies, duties, or similar charges, including value-added tax, sales tax, and withholding tax (collectively, "Taxes"). Customer shall be responsible for paying all Taxes associated with its use of the Services, excluding those based on Company's net income. If Company has a legal obligation to pay or collect Taxes for which Customer is responsible, Company may invoice Customer for such Taxes, and Customer shall pay such Taxes within thirty (30) days of the invoice date.
- 5.6. **Changes to Fees.** Company may change the Fees for the Services upon sixty (60) days' prior written notice to Customer. Any such changes shall apply to the Services provided after the effective date of the change, and shall not apply to any Services provided during the then-current Term. If Customer does not agree to the Fees change, Customer may terminate this Agreement upon thirty (30) days' prior written notice to Company, provided that such notice is given within thirty (30) days of receipt of Company's notice of the Fees change.

6. Term/Termination

- 6.1. **Term.** This Agreement will commence on the effective date of the applicable Order and continue until the expiration of all applicable Orders, unless terminated by either Party in accordance with this Agreement (the "Term").
- 6.2. **Termination for Convenience.** Either party may terminate this Agreement for any reason upon thirty (30) days' prior written notice to the other Party, provided that any such termination for convenience by Customer shall be effective only upon the expiration of the then-current Term.
- 6.3. **Termination for Cause.** Either Party may terminate this Agreement if the other Party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30)

days after receipt of written notice of the same. In the event of a material breach by Customer that is not curable, Company may terminate this Agreement immediately upon written notice to Customer.

- 6.4. **Termination for Insolvency.** Either party may terminate this Agreement immediately upon written notice to the other party if the other party: (a) becomes insolvent or unable to pay its debts as they become due; (b) files a petition for bankruptcy or has a petition for bankruptcy filed against it that is not dismissed within sixty (60) days after filing; (c) makes an assignment for the benefit of creditors; or (d) dissolves or ceases to do business.
- 6.5. **Effect of Termination.** Upon termination of this Agreement, all rights granted to Customer under this Agreement will cease, and Customer will promptly discontinue all use of the Services.
- 6.6. **Fees Upon Termination.** In the event of termination for convenience by Customer, Customer shall pay to Company all fees due for the remainder of the then-current Order term. In the event of termination for cause by Company, Customer shall pay to Company all fees due through the then current Order term.
- 6.7. **Survival.** The provisions of this Agreement that by their nature should survive termination or expiration of this Agreement, including without limitation provisions regarding payment obligations, intellectual property ownership, confidentiality, indemnification, limitation of liability, and any other provisions that reasonably may be deemed to survive, shall survive the termination or expiration of this Agreement.

7. Confidentiality

- 7.1. **Definition. "Confidential Information"** means any non-public information disclosed by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**"), either directly or indirectly, in writing, orally, or by inspection of tangible objects, that is designated as "confidential" or "proprietary" or that reasonably should be understood to be confidential or proprietary given the nature of the information and the circumstances of disclosure. Confidential Information includes, without limitation, the terms and conditions of this Agreement, the Services, any software and related Documentation provided by Company, business plans, technical information, product plans, and financial information.
- 7.2. **Exceptions.** Confidential Information does not include information that: (a) is or becomes publicly known through no fault of the Receiving Party; (b) was known by the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation of confidentiality; (c) is independently developed by the Receiving Party without reference to or use of the Disclosing Party's Confidential Information; or (d) is lawfully received by the Receiving Party from a third party without breach of any obligation of confidentiality.
- 7.3. **Obligations.** The Receiving Party shall: (a) hold the Disclosing Party's Confidential Information in strict confidence; (b) use the Disclosing Party's Confidential Information solely for the purpose of performing its obligations or exercising its rights under this Agreement; (c) limit access to the Disclosing Party's Confidential Information to those of its employees, contractors, and agents who have a need to know such information for purposes of this Agreement and who are bound by confidentiality obligations at least as restrictive as those set forth herein; and (d) protect the Disclosing Party's Confidential Information with the same degree of care it uses to protect its own confidential information of a similar nature, but in no event less than a reasonable degree of care.
- 7.4. **Disclosure Required by Law.** If the Receiving Party is required by law, regulation, or court order to disclose the Disclosing Party's Confidential Information, the Receiving Party shall, to the extent legally permissible, provide the Disclosing Party with prompt written notice of such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, the Receiving Party shall

disclose only that portion of the Confidential Information that it is legally compelled to disclose, and shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to such information.

7.5. **Return or Destruction.** Upon the termination of this Agreement or at the Disclosing Party's request, the Receiving Party shall promptly return or destroy all copies of the Disclosing Party's Confidential Information in its possession or control, and certify in writing that it has complied with this Section. Notwithstanding the foregoing, the Receiving Party may retain one copy of the Disclosing Party's Confidential Information solely for archival, audit, or regulatory purposes, provided that such retained information remains subject to the confidentiality obligations set forth in this Section 7 for as long as it is retained.

8. **Compliance with Laws.** Each Party shall comply with all Applicable Laws in connection with its performance of its obligations and exercise of its rights under this Agreement. Customer shall promptly notify Company in writing if it becomes aware of any violation or potential violation of the representations, warranties, or covenants set forth in this Section 8, and shall reasonably cooperate with Company in any investigation, remediation, or other action taken in response to such violation or potential violation. If Company becomes aware of any violation or potential violation of this Section 8 by Customer, Company may, in addition to any other remedies it may have under this Agreement or at law, immediately terminate this Agreement upon written notice to the other party.

9. **Privacy and Security.**

9.1. **Data Privacy.** Each Party shall comply with all applicable data protection and privacy laws and regulations in connection with its collection, use, and disclosure of Personal Data under this Agreement, including without limitation the European Union General Data Protection Regulation (GDPR), the California Consumer Privacy Act (CCPA), and any other applicable data protection and privacy laws or regulations. Company's collection, use, and disclosure of Personal Data in connection with the Services are further governed by Company's privacy policy, which is available on Company's Site and is incorporated into this Agreement by reference.

9.2. **Customer Content.** Customer is solely responsible for obtaining all necessary consents, permissions, and authorizations required under Applicable Laws for the provision of its data and content to Company for use in connection with the Services, and for the grant of rights and licenses to Company under this Agreement. Customer represents and warrants that its Customer Content, and Company's use thereof in accordance with this Agreement, does not and will not violate any Applicable Laws.

9.3. **Security Measures.** Company shall implement and maintain appropriate technical and organizational measures to protect Customer Content from unauthorized access, use, disclosure, alteration, or destruction, and to ensure the confidentiality, integrity, and availability of Customer's data and content processed in connection with the Services. Such measures shall include, without limitation, access controls, encryption, network and system security, and regular security testing and monitoring.

10. **IP Ownership**

10.1. **Company IP and Customer Content.** As between the Parties, Company retains all right, title, and interest in and to the Services, including without limitation all software, algorithms, models, documentation, data, processes, methodologies, techniques, tools, and any other intellectual property or proprietary rights embodied in or associated with the Services, and any modifications, enhancements, improvements, updates, or upgrades thereto (collectively, "**Company IP**") and Customer retains all similar rights in its Customer Content. No rights or licenses are granted to Customer under this Agreement, whether by implication, estoppel, or otherwise, except for the limited rights and licenses expressly granted to Customer in this Agreement.

10.2. Output. Company agrees that as between the Parties, and to the extent permitted by Applicable Laws, Customer owns the Output and is responsible for its use. Company hereby assigns to Customer all of Company's right, title, and interest, if any, in and to Output.

10.3. Feedback. If Customer provides Company with any feedback, suggestions, or recommendations regarding the Services, including without limitation possible improvements or modifications ("**Feedback**"), Customer hereby grants to Company a non-exclusive, perpetual, irrevocable, royalty-free, fully paid-up, worldwide license to use, reproduce, modify, create derivative works based on, publicly display, publicly perform, and otherwise exploit such Feedback, in whole or in part, in any manner or medium now known or later developed, without any compensation or attribution to Customer. Customer represents and warrants that its Feedback does not and will not infringe or misappropriate any third-party Intellectual Property Rights or violate any Applicable Laws.

11. Representations, Warranties, Disclaimers

11.1. Mutual Representations and Warranties. Each Party represents and warrants to the other party that: (a) it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation or organization; (b) it has full power and authority to enter into and perform its obligations under this Agreement; (c) this Agreement constitutes its legal, valid, and binding obligation, enforceable against it in accordance with its terms; and (d) its execution, delivery, and performance of this Agreement do not and will not conflict with or result in a violation of any agreement, instrument, judgment, decree, order, or governmental regulation to which it is a party or by which it is bound.

11.2. Company Representations and Warranties. Company represents and warrants to Customer that: (a) it will provide the Services in a professional and workmanlike manner, consistent with generally accepted industry standards; (b) the Services will materially conform to the applicable Documentation provided by Company; and (c) it will use commercially reasonable efforts to ensure that the Services do not contain any harmful code, viruses, malware, or other malicious software.

11.3. Customer Representations and Warranties. Customer represents and warrants to Company that: (a) it has all necessary rights, consents, and permissions to provide Customer Content to Company for use in connection with the Services, and to grant the rights and licenses granted to Company under this Agreement; and (b) Customer Content, and Company's use thereof in accordance with this Agreement, do not and will not infringe or misappropriate any third-party Intellectual Property Rights or violate any Applicable Laws.

11.4. DISCLAIMERS. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 11, THE SERVICES AND OUTPUT ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND COMPANY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. COMPANY DOES NOT WARRANT THAT THE SERVICES OR OUTPUT WILL MEET CUSTOMER'S REQUIREMENTS, THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE, OR FREE FROM HARMFUL COMPONENTS, OR THAT ANY DEFECTS OR ERRORS IN THE SERVICES WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM COMPANY OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

11.5. Acknowledgment of Customer Content and AI. Customer acknowledges and agrees that Company's provision of the Services and the Output generated by the Services are based on data, information, and content provided by Customer and third parties, and that Company is not responsible for the accuracy, completeness, or timeliness of any such data, information, or content. Customer further acknowledges and agrees that the Services are provided using artificial intelligence models, and that Customer is solely responsible for evaluating and verifying

the accuracy, appropriateness, legality and applicability of Output before taking any action or making any decisions based on such Output.

12. Indemnification

- 12.1. **Indemnification by Company.** Company shall defend, indemnify, and hold harmless Customer, its Affiliates, and their respective officers, directors, employees, and agents (collectively, the "**Customer Indemnitees**") from and against any and all third-party claims, demands, actions, suits, or proceedings (collectively, "**Claims**"), and any related damages, losses, liabilities, judgments, awards, settlements, costs, and expenses, including reasonable attorneys' fees (collectively, "**Losses**"), to the extent arising out of or resulting from any allegation that the Services, when used in accordance with this Agreement, infringe or misappropriate any third-party Intellectual Property Rights. Company shall not be responsible for a Claim or Losses to the extent such arises from a Customer Controlled Matter.
- 12.2. **Infringement Remedy.** If a Claim alleges, or if Company reasonably believes, that the Services infringe any third-party Intellectual Property Rights or their use is enjoined, Company may, at its sole option and expense: (a) obtain the right for Customer to continue using the Services; (b) modify the Services with materially similar components so that the Services are no longer infringing; or (c) if neither (a) nor (b) is commercially practicable, terminate this Agreement upon written notice to Customer and refund to Customer any prepaid fees for the unused portion of the Services. This Section 12 states Company's entire liability and Customer's exclusive remedy for any infringement of third-party intellectual property rights.
- 12.3. **Indemnification by Customer.** Customer shall defend, indemnify, and hold harmless Company, its Affiliates, and their respective officers, directors, employees, and agents (collectively, the "**Company Indemnitees**") from and against any and all Claims, and any related Losses, to the extent arising out of or resulting from: (a) Customer's or its Users' use of the Services in violation of this Agreement or Applicable Law; (b) Customer Content infringing Applicable Laws or the Intellectual Property Rights or other rights of such third party; or (c) Customer's breach of any of its representations, warranties, or covenants under this Agreement (collectively "**Customer Controlled Matters**").
- 12.4. **Indemnification Procedure.** The Party seeking indemnification (the "**Indemnified Party**") shall promptly notify the other Party (the "**Indemnifying Party**") in writing of any Claim for which indemnification is sought, provided that the Indemnified Party's failure to provide timely notice shall not relieve the Indemnifying Party of its indemnification obligations except to the extent such failure materially prejudices the Indemnifying Party's ability to defend the Claim. The Indemnifying Party shall have sole control of the defense and settlement of the Claim, provided that the Indemnified Party may participate in the defense at its own expense and with counsel of its own choosing. The Indemnified Party shall reasonably cooperate with the Indemnifying Party in the defense and settlement of the Claim, at the Indemnifying Party's expense. The Indemnifying Party shall not settle any Claim without the Indemnified Party's prior written consent if the settlement requires the Indemnified Party to admit liability, pay money, or take or refrain from taking any action, other than ceasing use of the allegedly infringing materials.

13. Limitation of Liability

- 13.1. **Exclusion of Certain Damages.** To the maximum extent permitted by Applicable Law, in no event shall Company, or its officers, directors, employees, agents, or representatives, be liable to Customer for any special, indirect, incidental, consequential, punitive, or exemplary damages, including, but not limited to, lost profits, lost revenues, lost business opportunities, loss of goodwill, or business interruption, arising out of or in connection with this Agreement or the performance or non-performance of the Services, whether based on contract, tort, negligence, strict liability, or any other legal theory, even if Company has been advised of the possibility of such damages.

13.2. **Cap on Liability.** Except for Company's Indemnification obligations in Section 12.1, Company's liability for any Losses arising out of or related to this Agreement, whether arising out of contract, tort (including negligence), strict liability, or any other legal theory, shall in no event exceed the total amount of Fees paid or payable by Customer to Company under this Agreement during the twelve (12) month period immediately preceding the event giving rise to such liability. Notwithstanding the foregoing, for any Losses arising from a Trial or Beta Use, Company's total liability to Customer shall not exceed \$200 USD.

13.3. **Essential Purpose.** The Parties acknowledge and agree that the limitations and exclusions of liability set forth in this Section 13 have been negotiated and are fundamental elements of the basis of this Agreement, and the Parties would not have entered into this Agreement without such limitations and exclusions. The limitations and exclusions of liability set forth in this Section 13 shall apply even if any limited remedy specified in this Agreement fails of its essential purpose.

14. Publicity

14.1. **Use of Logos and Marks.** Company may use Customer's name, social media handles, logo, or other trademarks in customer lists, press releases, blog posts, marketing materials, or other promotional materials, solely to identify the other party as a customer, as applicable, in accordance with any trademark usage guidelines provided by Customer. Except for the foregoing use, neither Party shall make any public announcement, press release, or other public statement concerning this Agreement, the existence of the business relationship between the Parties, or the terms and conditions of this Agreement, without the prior written consent of the other Party, which may be withheld at such Party's sole discretion.

15. **Notice.** All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "**Notice**") must be in writing and addressed to the parties at their respective contact information specified in this Agreement or the applicable Order or such other address that may be designated by a Party in writing. All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email (with read receipt and confirmation of receipt), or certified or registered mail (in each case, return receipt requested, postage prepaid). A Notice is effective only upon receipt by the receiving Party, and if the Party giving the Notice has complied with the requirements of this Section.

16. Governing Law.

16.1. **Governing Law.** This Agreement and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws principles.

16.2. **Jurisdiction.** Each Party irrevocably agrees that the courts of the State of New York and the United States District Court for the State of New York shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

17. Miscellaneous

17.1. **Force Majeure.** Neither Party shall be liable for any delay or failure to perform any of its obligations under this Agreement (except for payment obligations) if and to the extent that such delay or failure is caused by an event or circumstance beyond the reasonable control of the Party, including without limitation acts of God, natural disasters, pandemics, war, terrorism, labor disputes, or interruptions of essential services (a "**Force Majeure Event**"). The affected Party shall promptly notify the other Party in writing of the Force Majeure Event and use commercially reasonable efforts to mitigate its effects and resume performance as soon as practicable. If a

Force Majeure Event prevents the affected Party's performance for a continuous period of more than thirty (30) days, the unaffected Party may suspend or terminate this Agreement.

17.2. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

17.3. **Independent Contractors.** The Parties are independent contractors, and nothing in this Agreement creates any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the Parties.

17.4. **Assignment.** Neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, except that Company may assign this Agreement in its entirety without Customer's consent in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

17.5. **Entire Agreement.** This Agreement, together with any Order, schedules, exhibits, or attachments hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, negotiations, understandings, and communications, whether written or oral, relating to the same subject matter. In the event of any conflict between the terms of this Agreement and the terms of any Order, schedule, exhibit, policy, or attachment, the terms of this Agreement shall control unless otherwise expressly stated in such Order, schedule, exhibit, policy, or attachment.

17.6. **Severability.** If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

17.7. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

17.8. **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

17.9. **Waiver.** No failure or delay by any party in exercising any right, power, or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. Any waiver of any provision of this Agreement by a party shall be effective only if in writing and signed by the waiving Party.

17.10. **Modification.** Company may modify this Agreement at any time by posting a revised version on the Site, and such modifications will become effective as of the first day of the calendar month following the month in which they were first posted. If Customer objects to the updated Agreement, as its sole and exclusive remedy, Customer may choose to not renew any applicable Orders at the end of the Term. For the avoidance of doubt, any Order is subject to the version of the Agreement in effect at the time of execution of the applicable Order.

18. **Definitions.** Capitalized terms have the meaning set forth below:

18.1. **"Affiliate"** means, with respect to a Party, any entity that directly or indirectly controls, is controlled by, or is under common control with such Party, where "control" means the ownership of more than 50% of the voting securities or other equivalent voting interests of the subject entity.

- 18.2. **"Applicable Law"** means all applicable statutes, laws, ordinances, regulations, and other legally enforceable requirements of any federal, state, local, or foreign government or governmental agency, authority, or other regulatory body applicable to a particular Party's performance under this Agreement.
- 18.3. **"Available"** means that the Services are accessible and operational for use by Customer, as determined by Company's system monitoring data.
- 18.4. **"Documentation"** means any user guides, manuals, specifications, and other materials, in any form or medium, that are provided or made available by Company to Customer for use in connection with the Services, including those available on the Site.
- 18.5. **"Fees"** means the charges, fees, and other amounts payable by Customer to Company for the provision of the Services, as specified in an Order, the Site or otherwise agreed by the Parties, including, but not limited to, subscription fees, usage-based fees, support fees, and any other fees for additional features, functionality, or services that may be offered by Company from time to time.
- 18.6. **"Intellectual Property Rights"** means all patents, copyrights, trademarks, trade secrets, and other intellectual property rights recognized under the laws of any jurisdiction, including any registrations, applications, renewals, or extensions thereof.
- 18.7. **"Output"** means the images, artwork and other content based on Customer Content and Customer's requests that is generated from the Services, including all embedded images and artwork therein.
- 18.8. **"Personal Data"** means any information relating to an identified or identifiable natural person, as defined under applicable data protection and privacy laws and regulations.
- 18.9. **"Sensitive Information"** means any information that is subject to heightened security requirements under Applicable Law or by its nature, including, but not limited to, financial account numbers, credit or debit card numbers, Social Security numbers, driver's license numbers, passport numbers, or other government-issued identification numbers, and any other information that may be used to access or compromise an individual's financial, health, or other sensitive information.
- 18.10. **"Services"** means the AI-powered platform provided by Company, including any related software, tools, features, functionality, updates, upgrades, and enhancements, as well as any associated support and maintenance, as located at www.imagica.lol and www.fotocuentos.com.
- 18.11. **"Site"** means Company's website located at www.imagica.lol and www.fotocuentos.com or any other online platform through which Company provides access to the Services.