

Groakapp Subscription Agreement

This Subscription Agreement is made on **October 9, 2020 (the "Effective Date")**, between **Off the Rails Brewing Company Ownership**, at its principal place of business at **111 S Murphy Ave, Sunnyvale, CA 94086**.

1. Term:

This agreement begins on the Effective Date and will continue until terminated.

2. Grant of License to Access and Use Service.

Groakapp hereby grants to Off the Rails Brewing Company Ownership, a non-exclusive, non-sublicensable, non-assignable, royalty-free, and worldwide license to access and use the service (the "Service") solely for Off the Rails Brewing Company's internal business operations in accordance with the terms of this agreement and Groakapp's online terms of use.

3. Definitions.

3.1 Aggregated Data means any non-personally identifiable, technical, statistical or analytical data gathered or generated directly by use of the Subscription Services. Groakapp may use this information to monitor and improve its products, services or to provide customized services or technologies to their customers. Groakapp may collect and use this information in accordance with its privacy policies and in accordance with applicable data protection laws. Aggregated Data does not include Customer Data.

3.2 "Authorized End User" means any individual authorized, by virtue of such individual's relationship to, or permissions from, Customer, to access the Services pursuant to Customer's rights under this Agreement.

3.3 "Customer" means either you as an individual, or a corporate entity or other business organization to whom Groakapp provides the Subscription Services for use by itself or by Authorized End Users.

3.4 "Customer Data" means all the data and/or information provided by Authorized End Users and/or Customer during the use of the Subscription Services, including all text, graphics, pictures, photos, profiles, reviews, messages, notes, and/or any other uploaded content, published or displayed on or through the Subscription Services, or transmitted to or shared with other users. Customer Data does not include any Aggregated Data.

3.5 "Professional Services" means additional and separate service(s) not included in this Agreement, and that are geared towards special requirements of clients, such as configuration, adaptation, development of customized features or functionalities to the Subscription Services, and the like. Professional Services are provided by Groakapp on a time and materials basis under the terms of a separate agreement.

3.6 “Subscription Services” means the hosted services provided by Groakapp to Authorized End Users and/or Customers by means of accessing and using the features and functions of the Groakapp applications, as contemplated in this Agreement.

3.7 “User License” shall mean a license with a unique user identification and password to grant access to a single named user to the Subscription Services, solely for the term such services are contracted.

4. Subscription Services

4.1 User Licenses

User Licenses are for designated users and cannot be shared or used by more than one Authorized End User, but may be re-designated to new users, as necessary, provided such re-designation is not used to circumvent the prohibition on sharing User Licenses. Unless otherwise specified in the relevant subscription order.

5. Groakapp Responsibilities and Rights

5.1 Services.

Groakapp will provide the Subscription Services in a professional manner consistent with general and reasonable industry standards.

5.2 Initial Support

For the 12-month period beginning on the Effective Date, Groakapp will provide customer with the following support:

1. Electronic support during customer’s normal business hours in order to help Customer correct problems with the Software, and
2. Platform-based support system generally available during normal business hours.

5.3 Renewed Subscription.

After the initial 12-month subscription period, the customer may elect to renew Groakapp's subscription services for additional 12-month periods, at Groakapp's then-current service rates.

5.4 Hosting.

Customer agrees and understands that Groakapp has entered into arrangements with one or more third parties for the hosting of Groakapp’s applications and platform, whereby any such third party will perform the hosting obligations, provided that Groakapp shall ensure that any such third party shall be contractually bound to provide substantially the same level of protection with respect to Customer Data as is provided by the terms of this Agreement (our “Third-Party Hosting Provider”). Customer acknowledges and agrees that the Third-Party Hosting Provider’s service levels, use policies and terms of service will apply to Customer and that Customer is bound by such terms of service and use policies (the “Third-Party Hosting Terms of Service”).

5.5 Aggregated Data.

Customer acknowledges and agrees that Groakapp may compile anonymous Aggregated Data. To the extent necessary, Customer hereby grants Groakapp a royalty-free, nonexclusive, irrevocable, right and license (with the right to sublicense) to develop anonymous Aggregated Data from the use of the Subscription Services.

5.6 System Notifications.

Customer shall receive reasonable system notifications pertaining the Subscription Services.

5.7 Professional Services

Customer may purchase additional Professional Services pursuant to a separate Professional Services Agreement (with its related Statements of Work) that has been mutually negotiated, agreed and separately executed by the Parties. Customer agrees and understands that absent such separate Professional Services Agreement, Groakapp has no obligation to perform any such services.

5.8 Data Protection.

Groakapp shall implement appropriate safeguards to prevent unauthorized access to, use of, or disclosure of the Protected Information.

5.9 Data Privacy

Groakapp may collect, use and process customer data only in accordance with Groakapp's online privacy policy.

6. Customer Responsibilities and Restrictions

6.1 Passwords and Unauthorized Access

Customer is responsible for maintaining the confidentiality of the passwords assigned to Customer. Customer will immediately notify Groakapp if it becomes aware that a password is lost, stolen, disclosed to an unauthorized third party, or otherwise compromised. Customer will be responsible for any and all activities made under Customer's User Licenses. Customer shall (i) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Subscription Services, and notify Groakapp promptly of any such unauthorized access or use, and (ii) comply with all applicable laws in using the Services.

6.2 Restrictions.

Customer and its Authorized End Users shall not (i) modify, copy or create derivative works based on the Subscription Services; (ii) create Internet "links" to or reproduce any content forming part of the Subscription Services, other than for its own internal business purposes; (iii) disassemble, reverse engineer, or decompile the Subscription Services or part thereof, or access it in order to copy any ideas, features, content, functions or graphics of the Subscription Services; (iv) interfere with or disrupt the integrity or performance of the Subscription Services; (v) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material via the Subscription Services; (vi) send or store viruses or malicious code via the Subscription Services; (viii) attempt to gain unauthorized access to the Subscription Services or its related applications, software, systems, platforms or networks; or (ix) use any components provided with the Services separately from the Subscription Services.

6.3 Customer Data.

Customer agrees that itself, or its Authorized End Users, are solely responsible for Customer Data, and it shall require Authorized End Users not to post, transmit, or share Customer Data on the Subscription Services that they do not have permission to post. Customer represents and warrants (i) that it has the right to disclose and provide to Groakapp any data provided through use and access of the Subscription Services, and that no materials of any kind submitted as Customer Data or otherwise posted, transmitted, or shared on or through the Subscription Services will violate or infringe upon the rights of any third party, including copyright, trademark, privacy, publicity or other personal or proprietary rights; or contain libelous, defamatory or otherwise unlawful material; and (ii) that Customer's (and that of its Authorized End Users') use of and access to the Subscription Services complies with all applicable laws, rules and regulations.

7. CONFIDENTIALITY

7.1 Definition of Confidential Information

"Confidential Information" means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information includes Customer Data. Groakapp Confidential Information includes the Subscription Services, Our Technology and Aggregated Data. The Confidential Information of each party includes the terms and conditions of this Agreement, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

7.2 Protection of Confidential Information

The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this Section 7.2.

7.3 Compelled Disclosure

The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information

8. PROPRIETARY RIGHTS

As between Groakapp and Customer, Groakapp, retains all right, title and interest to the Subscription Services, the Aggregated Data, and all related software, applications, programming, documentation, templates, questionnaires, methodologies, models, charts, specifications, reports, and any other intellectual property or items used to deliver the Subscription Services or made available to Customer as a result of the Services ("Our Technology"). The Subscription Services and Our related Technology are protected by applicable intellectual property laws and rights, including rights deriving from copyright, trade secret, patents, trademarks and related industrial property. Customer's access and use of the Subscription Services, Our Technology and any related materials shall be governed by the terms of this Agreement. There are no licenses granted by implication in this Agreement and Groakapp reserves and retains any rights not expressly granted to Customer. As between Groakapp and Customer, Customer owns all rights, title and interest in and to Customer Data. In the event Customer (or its Authorized End Users) provides Groakapp with any suggestions, enhancement requests, recommendations or other feedback relating to the Subscription Services or Technology ("**Feedback**"), Customer hereby grants Groakapp a royaltyfree, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate such Feedback into any Groakapp products or services, provided it does not include any of Customer's Confidential Information

9. Fees.

The Customer will be provided a year of free subscription service and will not be subject to a monthly subscription fee (the "**Subscription Fee**") for Service for the initial 12 month subscription period.

10. Termination

10.1 Termination on Notice

The Customer of this subscription agreement may terminate this agreement for any reason on 30 days' notice to Groakapp.

10.2 Termination for Material Breach.

Each party may terminate this agreement with immediate effect by delivering notice of the termination to the other party, if

1. the other party fails to perform, has made or makes any inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations, and

2. the failure, inaccuracy, or breach continues for a period of 30 days' after the injured party delivers notice to the breaching party reasonably detailing the breach.

10.3 Effect of Termination

1. **Discontinuance of Use.** The customer shall cease all use of the Service upon the effective date of the termination.
2. **Recovery of Data.** The customer of this subscription agreement will have 30 days from the date of termination to retrieve any of data that customer wishes to keep.

11. DISCLAIMERS AND LIMITS ON LIABILITY

11.1 Disclaimer.

CUSTOMER ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, GROAKAPP, MAKE NO WARRANTY, EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO THE SERVICES OR USE THEREOF. GROAKAPP, ITS AFFILIATES AND LICENSORS HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INTERFERENCE, NON-INFRINGEMENT AND INFORMATION CONTENT.

11.2 Disclaimer of Damages.

EXCEPT FOR A BREACH OF SECTION 6 AND EACH PARTY'S RESPONSIBILITIES IN SECTION 12, NEITHER PARTY OR ITS AFFILIATES ARE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE SERVICES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST COMPUTER USAGE TIME, AND DAMAGE TO, OR LOSS OF USE OF, DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND IRRESPECTIVE OF ANY NEGLIGENCE OF A PARTY OR WHETHER SUCH DAMAGES RESULT FROM A CLAIM ARISING UNDER TORT OR CONTRACT LAW.

11.3 Limits on Liability.

EXCEPT FOR A BREACH OF SECTION 3.5 AND EACH PARTY'S RESPONSIBILITIES IN SECTION 12, NEITHER PARTY OR ITS AFFILIATES SHALL HAVE AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEEDING THE LESSER OF FIVE HUNDRED THOUSAND DOLLARS (USD \$500,000.00) OR THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER PURSUANT TO THE ORDER FORM(S) GIVING RISE TO LIABILITY.

12. Infringement Claims

12.1 Indemnification by Groakapp.

Indemnification for Infringement Claims. Groakapp shall indemnify the customer of this subscription agreement against all losses and expenses arising out of any proceeding

1. brought by a third party, and
2. arising out of a claim that the Service infringe the third party's Intellectual Property rights.

12.2 Notice and Failure to Notify

Notice Requirement. Before bringing a claim for indemnification, the customer of this subscription agreement must

3. notify Groakapp of the indemnifiable proceeding, and
4. deliver to Groakapp all legal pleadings and other documents reasonably necessary to indemnify or defend the indemnifiable proceeding.

Failure to Notify. If the customer fails to notify Groakapp of the indemnifiable proceeding, Groakapp will be relieved of its indemnification obligations.

12.3 Exclusive Remedy.

The customers' right to indemnification is the exclusive remedy available with respect to a claim of indemnification.

13. General Provisions

13.1 Entire Agreement.

This agreement represents the entire understanding between the parties with respect to its subject matter and supersedes any previous communication or agreements that may exist.

13.2 Amendment.

This agreement can be amended only by a writing signed by both parties.

13.3 Assignment.

Neither party may assign this agreement or any of their rights or obligations under this agreement without the other party's written consent.

13.4 Notices

Method of Notice. The parties will give all notices and communications between the parties in writing by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid to the address that a party has notified to be that party's address for the purposes of this section.

Receipt of Notice. A notice given under this agreement will be effective on

1. the other party's receipt of it, or
2. if mailed, the earlier of the other party's receipt of it and the fifth business day after mailing it.

13.5 Governing Law.

This agreement will be governed, construed, and enforced in accordance with the laws of the State of Illinois, without regard to its conflict of laws rules.

13.6 Severability

If any part of this agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.

13.7 Waiver

The failure or neglect by a party to enforce any of rights under this agreement will not be deemed to be a waiver of that party's rights.

13.8 Force Majeure.

A party shall not be liable for any failure of or delay in the performance of this agreement for the period that such failure or delay is

- a. beyond the reasonable control of a party,
- b. materially affects the performance of any of its obligations under this agreement, and
- c. could not reasonably have been foreseen or provided against, but

will not be excused for failure or delay resulting from only general economic conditions or other general market effects.

14. MISCELLANEOUS.

Groakapp is not liable for its failure to perform any of its obligations under this Agreement during any period in which performance is delayed by Customer or circumstances beyond Groakapp's reasonable control. The parties are independent contractors and this Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. This Agreement constitutes the entire agreement between Customer and Groakapp and supersedes any prior or contemporaneous negotiations or agreements, whether oral or written concerning the Subscription Services. Customer agrees and accepts that Groakapp Third-Party Hosting Provider is a third party beneficiary to this Agreement. There are no other third party beneficiaries under this Agreement. No modification or waiver of any provision hereof will be effective unless made in a writing signed by both Groakapp and Customer. Customer may not assign or transfer this Agreement or the Subscription Services to a third party, whether by merger or otherwise. Should any provision of this Agreement be invalid or unenforceable, the remainder of the provisions will remain in effect. The failure of Groakapp to act with respect to a breach of this Agreement by Customer or others does not constitute a waiver and shall not limit Groakapp's rights with respect to such breach or any subsequent breaches. All notices under this Agreement will be in writing, in English and will be deemed to have been duly given when received, as duly confirmed by return receipt; or if transmitted during normal business hours by facsimile or e-mail when receipt is electronically confirmed. Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement

This agreement has been signed by the parties.

Groakapp

Date: 10/09/2020

Name: Jonathan Schubauer

Name: Vishisht Tiwari

Signature: *Jonathan Schubauer*

Signature: *Vishisht Tiwari*

Title: Proprietary Partners

Off the Rails Brewing Company

Date: _____

Name: _____

Signature: _____

Title: _____