

1 **VOILA MASTER AFFILIATE MARKETING AGREEMENT**

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3 This MASTER AFFILIATE MARKETING AGREEMENT (the “**Agreement**”) is made

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5 BETWEEN Visual Chameleon, Inc., a Delaware corporation (“**VOILA**”),  
6 with its principal place of business at 42697 Rolling Rock SQ, South Riding, VA 20152  
7 AND the “**COMPANY**” (as defined below)

8 Each VOILA and COMPANY may be referred to separately as a “**Party**” or collectively as the “**Parties**”. The  
9 Agreement is entered into as of the date listed in the first Order between the Parties (the “**Effective Date**”).

- 10 1. **DEFINITIONS.** All capitalized terms used herein, including those set forth in this Section 1, shall have  
11 the meanings indicated, and cognate terms shall have corresponding meanings.
- 12 1.1 “**Account**” means a password protected area within the Services dedicated to an entity (such as  
13 COMPANY).
- 14 1.2 “**Advertiser**” means each brand or entity that a Partner promotes.
- 15 1.3 “**Advertiser Content**” means all ad content, including visual, written or audible files, videos, and/or  
16 recordings, displayed, posted, uploaded, stored, exchanged or transmitted on or through VOILA.
- 17 1.4 “**Affiliate**” means, with respect to a Party, any person or entity which directly or indirectly controls, is  
18 controlled by, or is under common control with such Party. For purposes of this definition, control  
19 means direct or indirect ownership or control of more than 50% of the voting interests of the subject  
20 entity.
- 21 1.5 “**Applicable Privacy and Data Security Laws**” means all privacy, security, and data protection laws, rules  
22 and regulations of any applicable jurisdiction, that are applicable to the collection, processing, storage,  
23 protection and disclosure of Personal Data.
- 24 1.6 “**Billing Period**” means the period for which you agree to pay Fees and "Charges" (e.g., third party  
25 compensation and/or fees, etc.) under an Order. This may extend beyond any potential Subscription  
26 Term, including but not limited to Fees that are billed in arrears.
- 27 1.7 “**Claims**” means all third party alleged or actual assertions, causes of action (of any nature or type), and  
28 damages (of any nature or type), demands, disbursements, judgments, legal proceedings, liability,  
29 losses, settlement payments, and costs or expenses (including reasonable attorneys’ fees and costs).
- 30 1.8 “**COMPANY**” means the entity listed on an Order, and any Affiliate of COMPANY that enters an Order  
31 with VOILA that incorporates this Agreement by reference.
- 32 1.9 “**COMPANY Data**” means data that is submitted or collected for COMPANY or on behalf of an  
33 Advertiser via the Services. COMPANY Data does not include COMPANY Content or VOILA Data.
- 34 1.10 “**Confidential Information**” means all information or material, whether past, present or future, and  
35 whether in oral, written, digital, electronic or other form, including financial data, business plans,  
36 pricing, methods, methodologies, processes, lists, Intellectual Property Rights, customer information,  
37 products, services, information technology, software user interfaces, programs, research, development  
38 and/or marketing strategies, whether or not such information and materials are marked or identified as  
39 “confidential”.
- 40 1.11 “**Disclosing Party**” means a Party that discloses or makes available Confidential Information.
- 41 1.12 “**Documentation**” means all instructions and specifications of the Services that are distributed or made  
42 available by VOILA.
- 43 1.13 “**Fees**” means amounts due to VOILA for any potential subscription to and/or use of the Services or the  
44 provision of Services, including any fees set forth in a mutually executed Order and any fees that  
45 COMPANY has accepted by written (including click-through) consent.
- 46 1.14 “**Force Majeure**” means an act of God, or other cause beyond a Party’s reasonable control that  
47 prohibits a Party from performance or use of the Services under this Agreement.
- 48 1.15 “**VOILA IP**” means the VOILA Technology and VOILA Confidential Information, and any Intellectual  
49 Property Rights therein.
- 50 1.16 “**VOILA Data**” means aggregate anonymous or anonymized data and databases created or maintained  
51 by VOILA, that are derived from and are statistics and metrics regarding the performance of the VOILA  
52 Technology.
- 53 1.17 “**VOILA Technology**” means the Services, Documentation, platform, software, works of authorship,  
54 inventions, technology, hardware, processes, algorithms, user interfaces, know-how, trade secrets,  
techniques, designs, and other tangible or intangible technical material or information of VOILA, and

- 55 any derivative works, improvements or modifications to any of the foregoing.
- 56 1.18 **“Indemnified Party”** means the person or entity being Indemnified.
- 57 1.19 **“Indemnify”** means to indemnify, defend, and hold harmless the Indemnified Party in accordance with  
58 Section 8.
- 59 1.20 **“Indemnifying Party”** means the Party Indemnifying the Indemnified Party.
- 60 1.21 **“Influencer Spend”** means amounts paid or payable in relation to social media influencers'  
61 engagements.
- 62 1.22 **“Intellectual Property”** includes patents, patent applications, copyrights, trademarks, service marks,  
63 know-how, trade secrets and other protectible inventions.
- 64 1.23 **“Intellectual Property Rights”** means any rights in and to Intellectual Property, including applications  
65 and registrations of Intellectual property, and any goodwill associated with the Intellectual Property.
- 66 1.24 **“Marketplace”** is an online directory within the Partnership Cloud Services offering where COMPANY’s  
67 Program will be listed and includes functionality to discover and engage with prospective Partners.
- 68 1.25 **“Order”** means each mutually executed order form or statement of work for Services between the  
69 Parties that incorporates this Agreement by reference.
- 70 1.26 **“Partner”** means each person or entity that is engaged to promote the Advertiser through use of the  
71 Services.
- 72 1.27 **“Partner Compensation”** means amounts owed to Partners pursuant to Partner Contracts or for  
73 Influencer Spend.
- 74 1.28 **“Partner Contract(s)”** means agreements entered into with a Partner through (or implemented  
75 through) the Services with respect to promotion of the Advertiser or Advertiser Content, including  
76 terms relating to compensation and other Program details (such as permitted use, prohibited use, etc.).
- 77 1.29 **“Personal Data”** means information Processed by VOILA that identifies, describes, is capable of being  
78 associated with, or could be reasonably linked, directly or indirectly, with a particular natural person,  
79 either as an individual or as part of a household and that is defined as “personal data” or “personal  
80 information” under Applicable Privacy and Data Security Laws; provided, however, that Personal Data  
81 excludes and shall not include any anonymous or anonymized information.
- 82 1.30 **“Personnel”** means an entity’s employees, consultants, agents and independent contractors.
- 83 1.31 **“Privacy Policy”** means VOILA’s then-current privacy policy located at  
84 <https://www.voiladev.xyz/privacy>.
- 85 1.32 **“Process(ing)”** means any operation or set of operations that is performed by VOILA, including by  
86 automatic means, such as collection, recording, organization, storage, adaptation or alteration,  
87 retrieval, consultation, use, performance, disclosure by transmission, dissemination or making available  
88 (including making available to view), transfer, alignment or combination, blocking, erasure or  
89 destruction.
- 90 1.33 **“Program”** means each partnership automation program that the Services are used for forming and/or  
91 managing relationships with Partners.
- 92 1.34 **“Receiving Party”** means a Party that receives or is provided with access to the Disclosing Party’s  
93 Confidential Information.
- 94 1.35 **“Services”** means software owned and/or hosted by VOILA, that is made available on a subscription  
95 basis for software-as-a-service (“SaaS”), and/or any services performed by or on behalf of VOILA  
96 pursuant to this Agreement, whether subject to separate Fees, including any services that are ancillary  
97 or supplemental to the SaaS Services.
- 98 1.36 **“Subscription Term”** means the period identified on an Order for Services, including extensions and/or  
99 renewals.
- 100 1.37 **“Term”** means the period from the Effective Date through the earlier of (a) all Orders have expired, or  
101 (b) termination of the Agreement pursuant to Section 5.1.
- 102 1.38 **“Users”** means Personnel of COMPANY that are authorized by COMPANY to use the Services on behalf  
103 of COMPANY, and that set up user identifications (logins) and passwords. Each individual is a “User” and  
104 must have his/her own unique log-in and password.
- 105 1.39 **“Visitors”** means humans that are traffic and audiences referred to the Advertiser through interaction  
106 with Advertiser Content (i.e., by way of clicking links or filling-in forms, etc.).  
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- 108 **2. Access and Permitted Use**
- 109 2.1 **General.** During the Subscription Term, VOILA will perform and make available to COMPANY the  
110 Services pursuant to each Order. Any change to an Order shall be effective only through written mutual  
111 agreement of the Parties. The Services and Documentation will be made available by VOILA on a non-

112 exclusive, revocable basis during each Subscription Term, subject to the terms of this Agreement.  
113 Unless an Order limits or quantifies use of and/or access to the Services, the Services may be used by an  
114 unlimited number of Users, in accordance with the applicable Order and Documentation. As between  
115 VOILA and COMPANY, COMPANY shall be solely responsible for each User's acts, errors or omissions  
116 relating to the use of the Services of VOILA. From time to time, COMPANY may request (which may be  
117 through the Services or via email) that VOILA perform actions on COMPANY's behalf and/or VOILA may  
118 take actions for COMPANY when providing support Services. COMPANY shall remain liable for such  
119 actions taken by VOILA on COMPANY's behalf, when undertaken by VOILA in good faith and using a  
120 commercially reasonable interpretation of such instructions or as is reasonable to perform the support  
121 Services. VOILA may also take actions in VOILA's sole discretion that have a direct or indirect VOILA on  
122 COMPANY's use of the Services for the protection of or in the interests of the integrity and performance  
123 of the Services. Any obligations of VOILA under this Agreement and/or an Order may be performed by  
124 an VOILA Affiliate or sub-contractor. Notwithstanding the preceding, as between VOILA and COMPANY,  
125 the VOILA entity that executes a relevant Order shall remain responsible and liable for such VOILA  
126 Affiliate or sub-contractor's acts, errors or omissions.

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128 2.2 Restrictions. COMPANY and their Users shall not: (a) share, rent or use the Services for the benefit of  
129 any other person or entity other than as specified in an Order; (b) modify, copy, reverse compile,  
130 disassemble, reverse engineer, decompile or prepare derivative works based on the Services, or  
131 attempt in any manner to derive its source code; (c) hack, abuse, adversely interfere with the VOILA  
132 Technology (including excessive clicks, events, APIs, or data), or knowingly infect the VOILA Technology  
133 with viruses, worms or other malicious or destructive code; or (d) authorize any Users that are not  
134 Personnel of COMPANY and that do not have in place written agreement with each such User obliging  
135 the User to protect the confidentiality, use and non-disclosure of VOILA's Confidential Information and  
136 the Services. With respect to Users, COMPANY must obtain VOILA's prior written approval (in VOILA's  
137 sole discretion) for Users that are not employees of COMPANY. No User may be a competitor of VOILA,  
138 nor may any User use the VOILA Technology to compete with VOILA. COMPANY is solely responsible for  
139 the technology that COMPANY uses to access and utilize the Services and for its Users, including all of  
140 their acts, errors and omissions. COMPANY shall remove access for and notify VOILA regarding Users no  
141 longer authorized by COMPANY to access the Services.

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143 2.3 Quality Content & Relationships. All Advertiser Content, Partner Relationships and/or use of the  
144 Services must be lawful, of high quality, ethical and do not bring VOILA into disrepute or create  
145 reputational harm to VOILA. VOILA disclaims all liability for Advertiser Content. If VOILA Services include  
146 Advertiser Content creation, the Advertiser Content must be reviewed and approved in a timely  
147 manner, or it will be deemed to be approved. VOILA may, in its absolute discretion, refuse to host or  
148 remove Advertiser Content or Partner relationships, although VOILA is under no obligation to review  
149 and approve any Advertiser Content and/or Partner relationship. VOILA is not responsible or liable for  
150 Partners' selection, participation and/or content or the enforceability of Partner Contracts. VOILA may  
151 suspend or cancel the Services in relation to specific Partner relationships.

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153 2.4 Submissions/Feedback & Beta Tests.

154 2.4.1 Submissions. VOILA and its Personnel do not accept, review or consider any unsolicited ideas, works,  
155 materials, proposals, suggestions, content or the like, including for product enhancements, processes,  
156 marketing strategies, content or creative materials (all of the foregoing "Submissions"). If COMPANY  
157 or its Personnel submit Submissions, COMPANY agrees that (i) the Submissions as well as related  
158 Intellectual Property Rights become the property of VOILA, without any compensation to COMPANY  
159 or its Personnel; (ii) VOILA may use or redistribute the Submissions for any purpose and in any way on  
160 an unrestricted basis; and (iii) VOILA has no obligation to review the Submissions or treat the  
161 Submissions as COMPANY's Confidential Information. If VOILA solicits COMPANY's or Users' feedback  
162 on VOILA's Services and/or VOILA Technology, VOILA will accept such feedback only through the  
163 means and method and process through which the feedback is requested. Any feedback that  
164 COMPANY or Users provide will be deemed to be non-confidential and not proprietary to COMPANY.  
165 VOILA is free to use and redistribute such feedback on an unrestricted basis without compensation to  
166 COMPANY or Users.

167 2.4.2 Beta Tests. If COMPANY agrees to participate in beta testing of any new functionalities ("Beta  
168 Software") prior to commercial release, the Beta Software is provided "AS IS" without any warranty or

169 services level agreement of any kind, and VOILA disclaims all liability for the Beta Software. The beta  
170 testing is subject to termination at any time. COMPANY and participating Users may not demonstrate,  
171 copy, sell, allow to use, or disclose anything about, the Beta Software to anyone (including other  
172 COMPANY Personnel and Users or any third party) unless permitted by the terms of the Beta  
173 Software trial or without VOILA's prior written permission (in VOILA's sole discretion). Section 2.2  
174 restrictions apply. Information obtained using the Beta Software may not be accurate and may not  
175 correspond to information extracted from any other source, and use of the Beta Software may result  
176 in unexpected and/or undesirable results. Backup of COMPANY Data is COMPANY's responsibility, in  
177 its discretion and sole cost.

### 178 179 **3. Ownership & Reservation of Rights.**

180 3.1 VOILA Intellectual Property. As between VOILA and COMPANY, VOILA shall own all right, title and  
181 interest in and to the VOILA IP. If title to any of the VOILA IP does not, by operation of law, vest in  
182 VOILA, COMPANY hereby assigns to VOILA, or its designee, all right, title and interest in and to the  
183 VOILA IP. For avoidance of doubt, the foregoing shall not be construed to transfer to VOILA any right,  
184 title or interest in or to Advertiser Content. Except for the rights expressly granted to COMPANY  
185 pursuant to Section 2, no licenses or other rights in or to the VOILA IP are granted to COMPANY or its  
186 Users or Affiliates, even if developed, invented, delivered, or authored by VOILA under or in connection  
187 with this Agreement. All rights to the VOILA IP not specifically granted in Section 2 are expressly  
188 reserved. Except as expressly provided in Section 10.5, any rights granted to COMPANY with respect to  
189 the VOILA IP are non-transferable. COMPANY agrees that it shall not encumber or assert a claim to  
190 ownership of, or any interest in, the VOILA IP.

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192 3.2 COMPANY Data & Advertiser Content. As between COMPANY and VOILA, COMPANY shall own all right,  
193 title and interest in and to the COMPANY Data and Advertiser Content, subject to the limited, non-  
194 exclusive, revocable rights expressly granted herein. While each Order is in force, COMPANY Data will  
195 be accessible and downloadable by COMPANY through the Services. COMPANY Data regarding the  
196 promotion of Advertiser Content by Partners is provided to such Partners and retained in such Partners'  
197 Accounts for as long as such Partner maintains an Account with VOILA. COMPANY hereby authorizes  
198 and licenses to VOILA the right to distribute Advertiser Content to Partners, and to display and use the  
199 Advertiser Content solely in connection with the performance of Services. COMPANY's Program will be  
200 listed in the Marketplace unless COMPANY opts out by written notice. COMPANY acknowledges and  
201 agrees that VOILA may Process and use information about COMPANY and User's use of the Services and  
202 the performance of the Services (VOILA Data), to develop, improve, support and promote the Services  
203 and/or VOILA Technology.

### 204 205 **4. Payments.**

206 4.1 Fees & Payment. The Fees, rates for Services and payment terms are specified on each Order. If the  
207 Order does not specify the currency and/or payment due date, all Fees shall be billed and paid in US  
208 Dollars. Each Order will have 40 days review period, during which COMPANY can review and decline  
209 Orders that may not fit into COMPANY's affiliate marketing program policies. If the Order is returned  
210 and refunded during this period of time, either partially or fully, Fees will be recalculated according to  
211 the same schema it has originally been set up and updated. All Orders will be automatically approved  
212 after 40 days unless they are explicitly declined by COMPANY. At the end of each natural month, an  
213 invoice will be generated to include all Orders approved in this month and Payments by COMPANY are  
214 due within seven (7) days upon invoice issuance, signified by the issuance date on the invoice. Payment  
215 may be made by bank transfer or PayPal, unless VOILA approves payment by credit card which is  
216 subject to VOILA's absolute discretion. VOILA reserves the right to adjust the provision of Services or  
217 charge additional Fees if VOILA reasonably determines that COMPANY's use constitutes an overly  
218 burdensome use of the Services (e.g., clicks, events, etc.). Except as explicitly provided for herein or on  
219 an Order, UPON MUTUAL EXECUTION THERE ARE NO CANCELLATIONS OR REFUNDS, AND COMPANY'S  
220 OBLIGATIONS ARE ENFORCEABLE FOR THE ENTIRE CONTRACTED AMOUNT, EVEN IF COMPANY  
221 CHOOSES AT ANY POINT NOT TO USE OR RECEIVE SERVICES FROM VOILA.

222 4.1.1 Errors/Disputes. If COMPANY discovers an error on an invoice, COMPANY shall notify VOILA Customer  
223 Support (via email to [billing@voila.love](mailto:billing@voila.love)) as soon as possible, and no adjustment will be made after  
224 seven (7) days from the date of the invoice.

225 4.1.2 Late Payment. Interest shall be due for any late payments of Fees (at the greater of 1.5% per month

226 or highest rate permitted by law), and COMPANY shall be responsible for VOILA's costs and expenses  
227 (including attorney fees) to collect past due amounts. If COMPANY is delinquent in payment of Fees  
228 or Partner Compensation (if applicable), VOILA, in its absolute discretion, may suspend COMPANY's  
229 access to the Services unless and until COMPANY pays all outstanding amounts, and VOILA may  
230 require advance payment of unpaid Fees through the end of the Subscription Term. VOILA may  
231 terminate this Agreement due to payment or insolvency issues pursuant to Section 5.1(b).  
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233 4.2 Taxes. VOILA's Fees do not include any taxes, levies, duties or similar governmental assessments of any  
234 nature, including, for example, value-added, sales, use or withholding taxes, assessable by any  
235 jurisdiction whatsoever (collectively, "Taxes"). Except for taxes assessable on VOILA's income, property  
236 and employees, COMPANY is responsible for paying all Taxes associated with the Orders and/or the  
237 Services. Depending on COMPANY's jurisdiction, applicable Taxes may be included on invoices to  
238 COMPANY, and collected, and remitted to the appropriate authorities, unless COMPANY provides  
239 VOILA with a valid tax exemption certificate authorized by the appropriate taxing authority. Except  
240 where due to VOILA's error or negligence, COMPANY is solely responsible for and shall pay any late  
241 charges, penalties or interest resulting from COMPANY's late payment of Taxes.  
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243 4.3 Payment of Partner Compensation. COMPANY shall pay all Partner Compensation to Partners through  
244 VOILA, and VOILA shall make payment to Partners in accordance with the terms of the Partner  
245 Contracts. COMPANY shall be solely responsible for all Partner Compensation amounts and may not use  
246 VOILA Technology to accrue unpaid debts with Partners. COMPANY acknowledges and agrees that  
247 VOILA shall have no obligation to process or pay any Partner Compensation unless and until COMPANY  
248 makes full payment to VOILA of all amounts then-due (including all Fees and Partner Compensation)  
249 and all such amounts have cleared. VOILA is not obligated to advance any funds to Partners. At any time  
250 during the Agreement, COMPANY may request via email to [billing@voila.love](mailto:billing@voila.love) that amounts overpaid  
251 (net of all amounts then-due for Fees and Partner Compensation) be refunded to COMPANY. COMPANY  
252 is liable for all costs and fees associated with collection efforts, including those of collections agencies  
253 and/or attorneys in addition to the amounts due. Where COMPANY requests that Partner  
254 Compensation is to be paid out in any currency other than in a currency set by COMPANY on the  
255 Services, such funds are subject to processing and COMPANY shall be solely responsible for any  
256 associated costs and charges. COMPANY also shall bear such costs and charges if payment is received in  
257 a currency not set on the Services as the Partner Contract currency. The Partner shall bear such costs  
258 and charges if the Partner requests to receive payment in a currency other than that set on the Services  
259 as the Partner Contract currency.  
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## 261 5. **Term & Termination.**

262 5.1 Term & Termination. This Agreement shall commence on the Effective Date and shall continue until the  
263 earlier of (a) the end of the Term, or (b) the Agreement is terminated in accordance with the terms set  
264 forth herein. Either Party may terminate this Agreement by providing the other Party with written  
265 notice:

- 266 (i) due to a material breach of this Agreement that is identified with specificity in the notice if such  
267 breach is not cured within thirty (30) days from the Party's receipt of the notice ("Notice Period");
- 268 (ii) immediately, where the material breach is incurable or repeated, or, with respect to COMPANY,  
269 where COMPANY is grossly delinquent in its payment obligations, or if the other Party: (A)  
270 becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B)  
271 files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise  
272 becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign  
273 bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of  
274 its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent  
275 appointed by order of any court of competent jurisdiction to take charge of or sell any material  
276 portion of its property or business;
- 277 (iii) immediately, where a Force Majeure event that was previously notified to the non-affected Party  
278 has continued for at least thirty (30) days; or
- 279 (iv) any other period of time (also a "Notice Period") as otherwise provided for in this Agreement or  
280 an Order.

281 Termination shall be effective as of the end of the relevant Notice Period, except as provided for in  
282 subsections (ii) and (iii) above.

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5.2 Effect of Termination. Upon the effective date of termination or expiration of the Order or this Agreement (as applicable), COMPANY's access to and use of the Service(s) shall cease; provided that all contracted Fees through the end of the Subscription Term shall remain due and owing (if unpaid), except if this Agreement is terminated due to either VOILA's uncured or incurable breach (pursuant to Section 5.1(i) or (5.1(ii)), or a Force Majeure affecting VOILA (pursuant to Section 5.1(iii)) – in which case VOILA will credit to COMPANY's Account any pre-paid, unused Fees, if COMPANY does not owe any Fees or Partner Compensation, refund such amount upon COMPANY's written request (or upon Account reconciliation if the Subscription Term has expired or been terminated). COMPANY shall continue to make payment of Partner Compensation and VOILA will continue to process payments to Partners for amounts that are incurred prior to but that become due and payable after the effective date of termination or expiration.

**6. Representations and Warranties.**

6.1 Continuing Warranties/Disclaimers. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 6, VOILA DISCLAIMS TO THE MAXIMUM EXTENT PERMITTED BY LAW ALL REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, FITNESS FOR USE AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, VOILA DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, NOR DOES VOILA MAKE ANY WARRANTY REGARDING THE AVAILABILITY OF COMPANY DATA PROCESSED BY VOILA, THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES OR THAT THE SERVICES WILL MEET COMPANY'S NEEDS. VOILA IS NOT LIABLE FOR THE ACTS, ERRORS OR OMISSIONS OF PARTNERS OR OTHER THIRD PARTIES, EXCLUDING VOILA AFFILIATES AND SUBCONTRACTORS (FOR WHICH VOILA SHALL REMAIN LIABLE).

6.2 Warranties.

- (a) VOILA. VOILA represents and warrants that: (i) it has full power and authority to execute, deliver and perform its obligations under this Agreement, and that its entry into or performance of this Agreement will not violate or conflict with any obligation, contract or agreement to which VOILA is a party or by which VOILA is bound; (ii) VOILA will comply with all applicable laws, including Applicable Privacy and Data Security Laws; (iii) the Services will conform in all material respects with the Documentation; (iv) to the best of VOILA's knowledge as of the Effective Date, VOILA is not aware of any Claim asserting that either the VOILA Technology or the Services infringe any third party's Intellectual Property Rights that would adversely affect VOILA's performance of its obligations under this this Agreement in any material respect; (v) it uses technology and practices consistent with comparable companies in its industry to secure COMPANY Data and the Services; and (vi) VOILA's Personnel have the proper skill, training, and background to perform VOILA's obligations under this Agreement in a competent and professional manner; provided, however that in the event of any breach of subsection (iii) above, COMPANY's sole and exclusive remedy, and VOILA's entire liability and obligation, shall be to perform further Services to cure any deficiency.
- (b) COMPANY. COMPANY represents and warrants that: (i) it has full power and authority to execute, deliver and perform its obligations under this Agreement, and that its entry into or performance of this Agreement will not violate or conflict with any obligation, contract or agreement to which COMPANY is a party or by which COMPANY is bound; (ii) COMPANY will comply with all applicable laws, including Applicable Privacy and Data Security Laws; (iii) it has the right to engage VOILA as a service provider of COMPANY to Process the COMPANY Data (including Personal Data) on COMPANY's behalf and VOILA's Processing Personal Data as contemplated by this Agreement will not violate Applicable Privacy and Data Security Laws; (iv) the disclosure and provision of COMPANY IP to VOILA, the transmission of COMPANY IP through the VOILA Technology, and the provision and uploading of the COMPANY IP for Processing and use by VOILA in accordance with the terms of this Agreement will not violate applicable law or the rights of any third party; and (v) the COMPANY Content shall be truthful, comply with applicable laws, and accurate in all material respects.

**7. Confidentiality & Personal Data.**

7.1 Scope. "Confidential Information" does not include information which is: (a) approved for release or

340 released by the Disclosing Party for public disclosure; (b) becomes known publicly through no fault of  
341 the Receiving Party; (c) is lawfully obtained from a third party free of restrictions on disclosure; (d) is  
342 already known to the Receiving Party; or (e) is developed by or for the Receiving Party independent of  
343 the Disclosing Party's Confidential Information. All Confidential Information (including all copies  
344 thereof) is and will remain the property of the Disclosing Party. A Disclosing Party may be authorized by  
345 a third party to disclose its information to the Receiving Party on a confidential basis, and such  
346 information shall be treated by the Receiving Party as "Confidential Information" of the Disclosing  
347 Party. The Receiving Party shall not disclose or make available the Disclosing Party's Confidential  
348 Information to anyone (including its Affiliates, Personnel and agents) other than those with a need to  
349 know such Confidential Information for the performance of this Agreement or as may be otherwise  
350 authorized by the Disclosing Party; provided, however, that COMPANY hereby authorizes VOILA to  
351 disclose COMPANY Confidential Information to Partners and VOILA's third party vendors relevant to  
352 and for the purposes of performing the Services. The Receiving Party may use the Disclosing Party's  
353 Confidential Information only for the purposes permitted under this Agreement. COMPANY  
354 acknowledges and agrees that the VOILA Confidential Information includes this Agreement, each Order,  
355 Partner Confidential Information, VOILA Affiliate Confidential Information, and VOILA Data. The  
356 Receiving Party shall protect the confidentiality of the Disclosing Party's Confidential Information by  
357 using the same degree of care (but not less than a reasonable degree of care) that it uses to protect its  
358 own valuable confidential and proprietary information of a similar nature. The Receiving Party shall be  
359 liable for any use or disclosure of the Disclosing Party's Confidential Information in violation of this  
360 Agreement by its Personnel, agents and Affiliates (unless such Affiliates have contracted directly with  
361 the Disclosing Party).

362  
363 7.2 Compliance with Law. The Receiving Party may disclose Confidential Information that it is obligated to  
364 produce by law or other similar requirement of a governmental agency or a subpoena for the limited  
365 purpose required by a court or government agency, provided that the Receiving Party shall provide the  
366 Disclosing Party with written notice in advance of any such disclosure (unless prohibited from providing  
367 prior notice by applicable law or order or if a protective order is in place that protects the Disclosing  
368 Party's Confidential Information), and shall comply with any applicable protective order or ruling  
369 designed to protect the confidentiality of the Confidential Information.

370  
371 7.3 Continuing Obligations. Upon termination or expiration of this Agreement, and except as otherwise  
372 provided for herein, the Receiving Party shall destroy the Disclosing Party's Confidential Information,  
373 unless return of Confidential Information is requested in writing by the Disclosing Party within ninety  
374 (90) days after termination or expiration of the Agreement. Notwithstanding the foregoing, the  
375 Receiving Party shall not be obligated to destroy any of the Disclosing Party's Confidential Information  
376 that it is required by applicable law to retain or that is archived in not-readily accessible form pursuant  
377 to the Receiving Party's normal document retention practices, subject to the continuing obligations of  
378 Section 7.1. For the avoidance of doubt, COMPANY Data may be used by VOILA to perform its  
379 obligations to COMPANY and applicable Partners. Notwithstanding anything to the contrary contained  
380 in this Agreement, COMPANY Data retained in a Partner Account may be retained by VOILA following  
381 any termination or expiration of this Agreement unless and until each Partner no longer maintains an  
382 Account with VOILA for as long as necessary for VOILA to comply with its legal or contractual obligations  
383 in relation to such Partner. Each Party's obligations of confidentiality, non-use and nondisclosure of  
384 Confidential Information shall survive the expiration or termination of this Agreement for a period of  
385 three (3) years, except that such obligations shall continue with respect to Personal Data (as provided  
386 for in Section 7.4) trade secrets unless and until the Confidential Information no longer constitutes a  
387 trade secret.

388  
389 7.4 Personal Data. COMPANY shall not provide VOILA with any Personal Data of its Visitors unless: (i)  
390 COMPANY has the right to engage VOILA as a service provider to Process such Personal Data on  
391 COMPANY's behalf; and (ii) COMPANY has provided any notices and obtained any consents necessary  
392 for VOILA to Process such Personal Data on COMPANY's behalf. If in the performance of this Agreement  
393 VOILA Processes Personal Data, VOILA will Process such Personal Data in accordance with Applicable  
394 Privacy and Data Security Laws, and its Privacy Policy. VOILA Affiliates may Process Personal Data on  
395 behalf of VOILA, pursuant to agreements between VOILA and such Affiliate, and VOILA shall remain  
396 liable for any breach of this Agreement by such VOILA Affiliates. Partners are not Personnel,



397 subcontractors or agents of VOILA and are responsible and liable for their own compliance with  
398 Applicable Privacy and Data Security Laws.

399  
400 **8. Indemnity.**

401 8.1 Indemnification. Each Party (as an “Indemnifying Party”) agrees to indemnify, defend, and hold  
402 harmless (“Indemnify”) the other Party, and its Affiliates, and each of their officers, directors,  
403 employees, agents, successors and assignees (each an “Indemnified Party”), from and against all Claims  
404 arising out of the Indemnifying Party’s: (a) violation of or failure to comply with any applicable law,  
405 ordinance, regulation, rule or order (including Applicable Privacy and Data Security Laws); (b) breach of  
406 any of its representations and warranties in this Agreement; (c) breach of Section 7 (Confidentiality &  
407 Personal Data); or (d) infringement or misappropriation of the third party’s Intellectual Property Rights,  
408 provided, however, that the obligation to Indemnify shall not apply to the extent that the infringement  
409 Claim arises from any unauthorized use or modifications to the Indemnifying Party’s Intellectual  
410 Property or any combination of the Indemnifying Party’s Intellectual Property with hardware, software,  
411 systems or data not provided by the Indemnifying Party. The Indemnifying Party’s indemnification  
412 obligations are subject to the limitations set forth in Section 9 and liability shall be apportioned  
413 between the Indemnifying Party and the Indemnified Party comparatively where the Claim arises from  
414 the Indemnified Party’s (i) breach of this Agreement, (ii) negligence, (iii) violation of any applicable law,  
415 (iv) willful misconduct; and/or (v) fraud. Notwithstanding the foregoing, if COMPANY is obligated to  
416 Indemnify VOILA for any Claim relating to Partner Compensation, the limitations set forth in this Section  
417 shall not apply and COMPANY shall be fully responsible and liable for all amounts due and owing for  
418 Partner Compensation.

419  
420 8.2 Requirements. A Party’s obligation to Indemnify pursuant to Section 8.1 is subject to (a) the  
421 Indemnified Party providing the Indemnifying Party with timely written notice of the Claim, (b) the  
422 Indemnified Party giving the Indemnifying Party the sole right to defend, compromise, and settle any  
423 such Claim (except where settlement would impose any cost or limitation on the Indemnified Party, or  
424 would admit fault by the Indemnified Party without the Indemnified Party’s consent), and (c) the  
425 Indemnified Party providing reasonable cooperation and assistance to the Indemnifying Party, at the  
426 Indemnified Party’s sole expense. Failure of the Indemnified Party to comply with Section 8.2(a) and/or  
427 (c) shall not relieve the Indemnifying Party of Indemnifying the Indemnified Party except and to the  
428 extent that the Indemnifying Party has been materially prejudiced by such non-compliance. The  
429 Indemnified Party shall be entitled to participate in its own defense at the Indemnified Party’s own  
430 expense, although such participation does not reduce or relieve the Indemnifying Party’s obligations  
431 under this Section 8. If VOILA is required by government regulation, subpoena, or other legal process to  
432 produce documents or Personnel as witnesses with respect to legal proceedings against COMPANY  
433 where VOILA is not an Indemnifying Party, the COMPANY will, so long as VOILA is not a party to the  
434 proceeding in which the information is sought, reimburse VOILA’s professional fees and expenses, as  
435 well as any fees and expenses of VOILA’s counsel in responding to such requests.

436  
437 **9. Limitations of Liability.**

438 9.1 Disclaimers. VOILA WILL NOT HAVE ANY LIABILITY TO THE COMPANY, ITS AFFILIATES OR ANY  
439 INDEMNIFIED PARTY FOR ANY LOST PROFITS OR LOST REVENUES OR FOR ANY INDIRECT, SPECIAL,  
440 INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS  
441 AGREEMENT, HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF  
442 LIABILITY, AND WHETHER OR NOT ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES. THIS SECTION 9.1  
443 DISCLAIMER DOES NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW, OR IN THE CASE OF  
444 VOILA’S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD. SUBJECT TO THE FOREGOING AND THE  
445 OTHER TERMS OF THIS AGREEMENT, EACH PARTY SHALL BE LIABLE FOR ITS PERSONNEL AND AFFILIATES  
446 (UNLESS SUCH AFFILIATE HAS A DIRECT CONTRACTUAL RELATIONSHIP WITH THE OTHER PARTY OR A  
447 PARTY’S AFFILIATE) AND THEIR ACTS, ERRORS OR OMISSIONS. VOILA SHALL HAVE NO LIABILITY FOR (a)  
448 ANY ACTS OR OMISSIONS OF PARTNERS OR ANY OTHER THIRD PARTIES (OTHER THAN VOILA’S  
449 AFFILIATES THAT DO NOT HAVE A DIRECT CONTRACTUAL RELATIONSHIP WITH COMPANY, AND VOILA’S  
450 SUBCONTRACTORS); OR (b) ANY DEFECTS, PROBLEMS, DAMAGES OR LOSSES CAUSED BY OR RESULTING  
451 FROM ANY FORCE MAJEURE, FAILURES OF THE INTERNET OR ANY PRODUCTS, SERVICES OR SOFTWARE  
452 NOT SUPPLIED BY VOILA.



454 9.2 LIMITS. NEITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT,  
455 WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE GREATER OF  
456 (a) VOILA FEES PAID OR PAYABLE TO VOILA BY COMPANY PURSUANT TO THIS AGREEMENT IN THE  
457 TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM, or (b)  
458 Twenty-five Thousand US Dollars (\$25,000). Notwithstanding the foregoing, the limitations set forth in  
459 this Section shall not apply and COMPANY shall be fully responsible and liable for: (i) all amounts due  
460 and owing for Fees (except as provided for in Section 5.3) and Partner Compensation, (ii) COMPANY's  
461 indemnification obligations, and (iii) COMPANY's misappropriation or infringement of any VOILA  
462 Intellectual Property and/or for COMPANY's breach of Section 2 (Access and Permitted Use). THIS  
463 SECTION 9.2 DOES NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW, OR IN THE CASE OF A  
464 PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD.

465  
466 9.3 ALLOCATION OF RISK. THE ABOVE LIMITATIONS ON LIABILITY AND DISCLAIMERS REFLECT THE AGREED-  
467 UPON ALLOCATION OF RISK BETWEEN THE PARTIES. THE LIMITATIONS AND DISCLAIMERS SPECIFIED IN  
468 THIS SECTION 9 WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS  
469 AGREEMENT IS FOUND TO HAVE FAILED IN ITS ESSENTIAL PURPOSE. COMPANY HEREBY EXPRESSLY  
470 ASSUMES ALL RISK RELATED TO ITS USE OF ANY DATA OR INFORMATION GENERATED THROUGH USE  
471 OF THE VOILA TECHNOLOGY, WHICH MAY NOT MEET THE NEEDS OR REQUIREMENTS OF COMPANY  
472 AND USERS.

473  
474 **10. Miscellaneous.**

475 10.1 Independent Contractor. The Parties' relationship is and shall remain that of independent contractors  
476 and nothing herein shall be deemed or construed to create an employer/employee, joint venture,  
477 agency, trust, fiduciary, or partnership or other relationship between the Parties. Neither Party shall  
478 have any authority to incur any obligations on behalf of the other Party or to make any promise,  
479 representation or contract of any nature on behalf of the other Party.

480  
481 10.2 Governing Law. The validity, interpretation and performance of this Agreement shall be governed and  
482 construed in accordance with the laws of California without reference to its choice of law doctrine. Each  
483 Party shall be entitled to pursue any remedies that are available to it at law or equity in state in Santa  
484 Barbara County, California, or, where federal court has exclusive jurisdiction, in the United States  
485 District Court for the Central District of California, Los Angeles County, California. Each Party agrees that  
486 it shall not raise, and hereby expressly waives, any defenses based upon venue, inconvenience of forum  
487 or lack of personal jurisdiction.

488  
489 10.3 Entire Agreement & Amendment: This Agreement and all Orders represent the entire understanding  
490 and agreement between the Parties that relate to the subject matter hereof ("Integrated Agreement"),  
491 and such Integrated Agreement supersedes any prior contracts, agreements, understandings or  
492 representations, whether written or oral. VOILA may modify any part or all of the Agreement. The  
493 revised version will become effective and binding the next business day after it is posted unless the  
494 Agreement (as applicable) specifies a later date for it to become effective, which shall be the effective  
495 date. VOILA shall also provide COMPANY with general notice via the Services. If COMPANY does not  
496 agree to the revised Agreement (as applicable), COMPANY must provide VOILA with written notice  
497 within thirty (30) days of the effective date of the revised version to either (i) terminate the Integrated  
498 Agreement, or (ii) continue to be governed by the terms and conditions of the Agreement (as  
499 applicable) prior to modification until the end of COMPANY's then-current Subscription Term; unless  
500 the modifications are required by law or VOILA is no longer capable of providing the Services on the  
501 prior terms and COMPANY's continued use will be subject to the notified revised version. If COMPANY  
502 or VOILA terminates the Agreement in accordance with the preceding, VOILA will promptly refund any  
503 prepaid but unused fees after reconciliation of COMPANY's Account. The Parties expressly agree that all  
504 confidentiality and non-disclosure agreements executed between the Parties prior to the date of this  
505 Integrated Agreement are terminated and this Integrated Agreement (including but not limited to  
506 Section 7 Confidentiality & Personal Data) applies to Confidential Information and Personal Data as of  
507 the Effective Date. Each of the Parties acknowledges that there are no other promises, representations,  
508 or warranties whatsoever, whether by a Party, its Affiliate, employee, contractor, officer, director,  
509 agent or attorney of such Party, and acknowledges that it has not executed or authorized the execution  
510 of this Agreement in reliance upon any such promise, representation or warranty, that is not expressly

511 contained in the Integrated Agreement.

512

513 10.4 No Third-Party Beneficiaries. This Agreement is made solely for the benefit of the Parties to this  
514 Agreement, their Affiliates (as applicable) and their respective permitted successors and assigns. Other  
515 than pursuant to a Party's indemnification obligations (as applicable), no other person or entity shall  
516 have or acquire any right, power or privilege by virtue of this Agreement, or have any benefit or  
517 interest, arising out of this Agreement. Where a Party's Affiliate has entered into an Order that is  
518 subject to the terms of this Agreement, the terms of this Agreement may be enforced by such Affiliate  
519 against their counterparty to the Order.

520

521 10.5 Assignment. COMPANY may not assign or transfer this Integrated Agreement without VOILA's prior  
522 written consent, and any attempt to do so without such consent shall be void. VOILA may assign these  
523 Terms to any VOILA Affiliate or in the event of merger, reorganization, sale of all or substantially all of  
524 VOILA's assets, change of control or operation of law. This Agreement shall be binding upon, and shall  
525 inure to the benefit of, the Parties and their respective successors and permitted assigns.

526

527 10.6 Notice. To VOILA, notices hereunder must be sent to Visual Chameleon, Inc, 10250 Constellation Blvd,  
528 WeWork Ste. 100, Los Angeles, CA 90067, USA, and, if applicable, to the address for the contracting  
529 VOILA Affiliate on the Order and will be deemed delivered as of the date of actual receipt. Notices to  
530 COMPANY and to COMPANY Affiliates will be provided to such entity's address on each relevant Order  
531 or as may be updated by either such entity on its Account or by written notice and will be deemed  
532 delivered as of the date of receipt or refusal to accept receipt. Alternatively, VOILA may give electronic  
533 notices by general notice via the Services and may give electronic notices specific to COMPANY by email  
534 to COMPANY's e-mail address(es) on record in its Account or through the in-Services notifications  
535 function. COMPANY must keep all of its Account information current.

536

537 10.7 Survival/Severability. Except as otherwise provided herein, the provisions of this Agreement that are  
538 necessary to preserve a party's rights or obligations or that otherwise by their sense and context are  
539 intended or specifically state that they are intended to survive expiration or termination of this  
540 Agreement shall survive (including the Parties' indemnification and payment obligations). The  
541 provisions of this Agreement are severable, and if any clause or provisions hereof shall be held invalid  
542 or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall  
543 affect only such clause or provision, or part thereof, in such jurisdiction and shall not in any manner  
544 affect such clause or provision in any other jurisdiction, or any other clause or provision in this  
545 Agreement in any jurisdiction. Any such clause or provision held invalid or unenforceable, in whole or in  
546 part, to the extent permitted by law, shall be restricted in applicability or reformed to the minimum  
547 extent required for such clause or provision to be enforceable.

548

549 10.8 Force Majeure. Each Party hereto shall be excused from default or delay in the performance of its  
550 obligations under this Agreement and any Order if and to the extent that such default or delay is caused  
551 by a Force Majeure. In the event of a Force Majeure, the nonperforming Party shall be excused from  
552 performance while such circumstances prevail and shall as soon as practicable notify the other Party of  
553 any actual or anticipated delay. Although an affected Party shall not be deemed to be in breach due to a  
554 Force Majeure, a Party's payment obligations may be delayed but not excused because of any Force  
555 Majeure.

556

557 10.9 Headings/Remedies/Waiver. The subject headings in this Agreement are for convenience only and shall  
558 not affect the construction or interpretation of any provision hereof. Except where this Agreement  
559 specifies exclusive remedies, each Party's rights and remedies whether in contract, law or equity, are  
560 cumulative. Any waiver by either Party of any provision or condition of this Agreement shall not be  
561 construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver  
562 of a subsequent breach of the same provision or condition, unless such waiver is expressed in writing  
563 and signed by the Parties. Delay in the enforcement of any remedy in the event of a breach of any term  
564 or condition, or in the exercise by either Party of any right, shall not be construed as a waiver of such  
565 remedy or right, unless the Agreement provides for a specific period for notice of breach or exercise of  
566 a right.

567

568 10.10 Electronic Signatures/Interpretation. COMPANY has been provided with the opportunity to request  
569 amendments to these online terms to be contained in one or more Orders. In the event of an ambiguity  
570 or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by  
571 the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by  
572 virtue of the authorship of any of its provisions. If there is conflict between terms in this Agreement,  
573 and the terms on an Order, the terms on the Order shall control and take precedence. EACH PARTY  
574 AGREES TO THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, ORDERS AND OTHER RECORDS AND TO  
575 ELECTRONIC DELIVERY OF NOTICES, POLICIES AND RECORDS OF TRANSACTIONS INITIATED OR  
576 COMPLETED THROUGH THE SERVICES. Further, each Party hereby waives any rights or requirements  
577 under any applicable statutes, regulations, rules, ordinances or other laws in any jurisdiction which  
578 require an original signature or delivery or retention of non-electronic records, or to payments or the  
579 granting of credits by other than electronic means. Whenever the context requires, the use in this  
580 Agreement of the singular shall be deemed to include the plural and vice versa, and each gender shall  
581 be deemed to include each other gender. References herein to sections refer to sections of this  
582 Agreement, except as otherwise stated. For purposes of this Agreement, each of the words "include,"  
583 "includes" and "including" shall be deemed to be followed by the phrase "without limitation," the word  
584 "any" shall be deemed to be followed by the phrase "and all," and the word "terms" shall be deemed to  
585 be followed by the phrase "and conditions."

586  
587 [END OF AGREEMENT]