Terms of service

ColorTokens Terms of Service (“EULA”)

Effective Date: 1st September 2023 _v1.4

IMPORTANT: PLEASE READ THE TERMS OF THIS EULA CAREFULLY. COLORTOKENS, INC. (“COMPANY” or “COLORTOKENS”) PROVIDES THE SUBSCRIPTION LICENSE OF THE SOFTWARE ONLY ON THE CONDITION THAT YOU ACCEPT THE TERMS OF THIS EULA AND ALL APPLICABLE ADDITIONAL TERMS INCORPORATED BY REFERENCE INTO THIS AGREEMENT, ALL OF WHICH TERMS, TOGETHER, CONSTITUTE THE AGREEMENT BETWEEN YOU AND COMPANY (THE “TERMS OF SERVICE”/EULA), AS FURTHER DESCRIBED HEREIN.

BY EXECUTING A WRITTEN ORDER FOR ALL OR ANY PORTION OF THE COLORTOKENS SOFTWARE, (A) YOU ACCEPT THIS EULA ON BEHALF OF THE ENTITY FOR WHICH YOU ARE AUTHORIZED TO ACT (“CUSTOMER”), (B) ACKNOWLEDGE/AGREE THAT YOU AND CUSTOMER AREARE LEGALLY BOUND BY THIS EULA, AND (C) YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER AND AUTHORITY TO ACT ON BEHALF OF AND BIND SUCH CUSTOMER.

LICENSE ACCEPTANCE PROCEDURE: BY EXECUTING A WRITTEN ORDER FOR USE OF THE COLORTOKENS SOFTWARE, YOU INDICATE THE ACCEPTANCE OF THIS END USER LICENCE AGREEMENT ALONG WITH THE LIMITED WARRANTY AND LIMITATION OF LIABILITY SET OUT IN THIS END USER LICENCE AGREEMENT. SUCH ACCEPTANCE IS ON BEHALF OF ANY CORPORATE ENTITY WHICH
EMPLOYS YOU OR WHICH YOU REPRESENT. IN THIS END USER LICENCE AGREEMENT, “YOU” AND “YOUR” INCLUDES BOTH YOU AS END USER AND, IF APPLICABLE THE CUSTOMER AS END USER (“END USER”). YOU SHOULD THEREFORE READ THIS END USER LICENCE AGREEMENT CAREFULLY BEFORE CLICKING ON THE ACCEPTANCE BUTTON.

BY EXECUTING A WRITTEN ORDER FOR AND USING THE COLORTOKENS SOFTWARE YOU ARE AGREEING THAT (A) YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF THE END USER; YOU ARE EMPLOYED OR AFFILIATED WITH (B) YOU AND THE CUSTOMER ACCEPT AND WILL BE BOUND BY THE
TERMS AND CONDITIONS OF THIS AGREEMENT, AND (C) YOU REPRESENT AND WARRANT THAT YOU ARE 18 YEARS OF AGE OR ABOVE/OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT OR IF YOUR ACCEPTANCE TO THIS EULA DOES NOT BIND YOUR ORGANIZATION, COLORTOKENS WILL

NOT AND DOES NOT PROVIDE THE SUBSCRIPTION LICENSE OF THE COLORTOKENS SOFTWARE TO YOU AND YOU MUST NOT USE THE COLORTOKENS SOFTWARE.

1. DEFINITIONS

1. "**Authorized User**" means the individuals, who can access or whom you have authorized to access the ColorTokens Software, including your affiliates, parent company, clients, employees, consultants, partners, representatives or other third parties that access the ColorTokens Software solely on your behalf for your internal operations.

2. "**Confidential Information**" means information disclosed by one party **("Discloser")** to the other party **("Recipient")**, or obtained by Recipient through inspection or observation of Discloser's property or facilities, or through access to or use of Discloser's systems or networks, whether in writing, or in oral, graphic, electronic or any other form, that is marked as, or disclosed or obtained under circumstances reasonably indicating it is, confidential or proprietary, or, if disclosed orally or in other intangible form, that is identified as confidential at the time of such disclosure.

3. "**ColorTokens Software**"/ "**Software**" is the proprietary source code, object code, analytical models, APIs, micro services, agents, and related documentation created or procured by ColorTokens including enhancements (Updates and Upgrades) and made available for Authorized Users via ColorTokens hosted SaaS cloud platform and licensed on subscription basis, use of which is enabled by accepting this ColorTokens Terms of Service and/or installing software components. For the purpose of clarity, license is provided for use on subscription basis and not for source code, object code and related documentation.

4. "**End User Content**" means any information, data, content, and materials that End User or any of its Authorized Users upload to transmit through, process using, or store on the ColorTokens Software.

5. "**Order**" means each order placed by End User directly to the Company or through its authorized channel partners including but not limited to resellers, referrals, distributors, teaming partners, consultants, consulting companies, managed security services providers, for the ColorTokens Software, identifying the features and functionality ordered, the number of Subscription licenses and Subscription term. Each Order is incorporated into, and will be deemed a part of, this EULA.

6. "**Subscription**" means End User's subscription license to use the ColorTokens Software as set forth in the applicable Order.

7. "**Subscription Period**" means the term of End User's Subscription as set forth in the applicable Order.

8. "**Term**" means the term of this EULA as set forth in Section 10.1.

2. COLORTOKENS SOFTWARE

1. License Grant. Subject to the terms and conditions of this EULA, Company will make available to End User and its Authorized Users, on a hosted "as-a-service" basis, the ColorTokens Software during the applicable Subscription Period, solely for End User's own internal business (including its affiliates where explicitly applicable based on agreement with the Company) operations and in accordance with the scope of use set forth in the applicable Order. Company hereby grants to the End User a non-exclusive, non-transferable, non-sublicensable license during the applicable Subscription Period. ColorTokens may, in its sole discretion, discontinue the Services or modify the features of the Subscriptions from time to time without prior notice. In the event that ColorTokens discontinues or materially diminishes functionality of a Service that Company has contracted for, Company shall be entitled to a pro rata refund for any fees paid not used.

2. Usage Restrictions. Without limiting any other provision of this EULA, End User will not (and will not permit any Authorized User or third party to) without explicit and written (signed) permission from the Company: (a) access or use the ColorTokens Software or ColorTokens Software or any portion thereof for any purpose or in any manner other than as expressly accepted under this EULA; (b) attempt or purport to sell, lease, sublicense, assign, or transfer access to the ColorTokens Software or any portion thereof to any third party, other than providing access to Authorized Users as expressly permitted under this EULA; (c) extract ideas, algorithms, procedures, workflows or hierarchies from the ColorTokens Software or any portion thereof, or otherwise attempt to reverse engineer the ColorTokens Software or any portion thereof, or use the ColorTokens Software or any portion thereof for the purpose of creating another product or service; (d) provide any means of access to, or otherwise display or transmit, the ColorTokens Software from or through any website (including by "framing" or "mirroring") other than the website provided by Company for such purposes; (e) remove any disclaimer, copyright, trademark, confidentiality, or other legal notice from the ColorTokens Software or any portion thereof (or any associated documentation or materials); (f) upload to, transmit through, process using, or store on the ColorTokens Software (i) any information, data, content, and materials that would infringe, misappropriate, or violate any third party's rights, or (ii) any virus, worm, trojan horse, time bomb, spyware, malware or other harmful or potentially harmful codes (g) use the ColorTokens Software for benchmarking or comparative or competitive analyses; (h) use the ColorTokens

Software or any portion thereof for any fraudulent or unlawful purpose or in any manner that would violate the legal rights of any third party; or (i) interfere with or disrupt the ColorTokens Software or the servers, software or networks used to make the ColorTokens Software available. Company will have the right, but not an obligation, to monitor End User's and Authorized Users' use of the ColorTokens Software and all portions thereof. End User will, and will cause each Authorized User to, use the ColorTokens Software and all portions thereof in accordance with all applicable laws, rules, and regulations.

3. Evaluation Use. In some cases, Company may provide End User with access to the ColorTokens Software for a limited period with or without charging any fee solely for evaluation purposes including but not limited to Proof of Concept "POC" or a Pilot ("**Evaluation Use**"), as indicated in the Order, wherever applicable. If an Order specifies Evaluation Use, then notwithstanding anything in this EULA to the contrary, End User is permitted to use the ColorTokens Software only for evaluation use internally and not for commercial use, and only during the evaluation period specified in the applicable Order. If End User wishes to use the ColorTokens Software for commercial purposes, then End User must place an Order and enter into a subscription license agreement with ColorTokens for a paid Subscription. ColorTokens reserves the right to terminate any Evaluation Use at any time without any notice. Notwithstanding anything in this EULA to the contrary, Section 7 (Representations and Warranties; Disclaimers), 8 (Indemnification) and 9 (Limitation of Liability) will not apply for Evaluation Use.

4. COLORTOKENS WARRANTS THAT THE COLORTOKENS SOFTWARE WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH COLORTOKENS SOFTWARE WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, COLORTOKENS DISCLAIMS ALL WARRANTIES, LIABILITIES AND CONDITIONS,
   EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY AGAINST INFRINGEMENT, THIRD-PARTY INDEMNIFICATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY UNFORSEEABLE LIABLILTY OF COLORTOKENS IS CAPPED AT $5000 (FIVE THOUSAND US DOLLARS).

5. Access Credentials. The ColorTokens Software provides the ability to End User to create user IDs and passwords to manage its tenant. The End User is required to provision access to its tenant for its Authorized Users ("**Access Credentials**"). End User will provide Access Credentials only to Authorized Users on their domain email and will require all Authorized Users to protect their Access Credentials from unauthorized use or disclosure. End User is solely responsible for any unauthorized use or disclosure of any Access Credentials it provisions for the management of the tenant. End User will duly inform each Authorized User of the applicable limitations and restrictions set forth in this EULA and require each Authorized User to comply

with such terms. End User will be responsible for all activities of its Authorized Users in connection with the ColorTokens Software and all activity using any Access Credentials issued to End User or any of its Authorized Users. End User Content. Company may use the End User Content in connection with providing the ColorTokens Software to End User under this EULA (and End User hereby grants Company the right to use the End User Content for such purposes). End User represents and warrants that: (a) End User possesses and will obtain and maintain all necessary rights, consents and licenses to use of the End User Content as contemplated by this EULA in compliance with all applicable contractual obligations, laws, rules, and regulations; and (b) the use of the End User Content as contemplated by this EULA does not and will not infringe, misappropriate or otherwise violate any copyright, trade secret, patent, or other intellectual property, privacy, or proprietary rights of any third party. End User, its Authorized Users, or its authorized channel partners such as but not limited to resellers, distributors, teaming partners, consultants, consulting companies, managed security services providers are permitted to extract or export policies/logs in any form from its own tenant within ColorTokens Software, however the privacy and confidentiality obligations of such extracted or exported data lies with the End User. ColorTokens is not liable for any usage (import/storage/transfer/processing) of such extracted or exported data by End User or authorized channel partners.

6. End User Infrastructure. Company is providing the subscription license of ColorTokens Software under this EULA in accordance with an Order/Evaluation Use. End User is solely responsible for procuring, supporting, securing, and maintaining overall IT environment and architecture, operating systems, devices, user and role privileges, networks, interfaces, databases, storage, connectivity, cloud resources, data center resources, telecom resources, all of the foregoing (collectively, the "End User Infrastructure"). Notwithstanding anything to the contrary, Company will have no liability with respect to any failure or interruption that is due to the End User Infrastructure or End User's failure to provide adequate End User Infrastructure, or for any security breach, loss of data, or similar event related to the End User Infrastructure.

3. AUDIT

During the Subscription Term for the ColorTokens Software and for a period of three (3) years after its expiration or termination, End User will take reasonable steps to maintain complete and accurate records of your use of the ColorTokens Software sufficient to verify compliance with this EULA. End User will allow ColorTokens and its auditors the right to

examine such records and any applicable books, systems or other equipment, and accounts, once per annual period, upon reasonable advanced notice, during your normal business hours, subject to Government security requirements. If the audit reveals an underpayment of license fees, End User will reimburse ColorTokens for the underpayment within thirty (30) days of such audit report.

4. OWNERSHIP

Subject only to the rights expressly granted under this EULA, as between the parties, (a) Company exclusively owns and retains all right, title and interest (including all intellectual property rights) in and to the ColorTokens Software including but not limited to all underlying technologies and associated documentations and all portions thereof; and (b) End User exclusively owns and retains all right, title and interest limited to all pre-existing intellectual property rights.

5. CONFIDENTIALITY

1. Disclosure and Use. **"Confidential Information"** shall mean the proprietary, Confidential, or trade secret information or know-how disclosed by either Party or its affiliates (**"Disclosing Party"**) to the other Party (**"Receiving Party"**). Recipient will maintain the confidentiality of the Confidential Information of Discloser and use at least the same efforts to prevent the unauthorized disclosure and use of such information that it uses to protect its own similar Confidential Information. Recipient will not disclose the Confidential Information of Discloser to anyone other than to those of its employees and contractors who need to know such Confidential Information in connection with Recipient's activities under this EULA and who are subject to confidentiality obligations at least as stringent as those set forth in this EULA. Recipient will use the Confidential Information of Discloser only to perform its obligations or exercise its rights under this EULA. The foregoing restrictions on disclosure and use will survive post three (3) years from the termination or expiration of this EULA.

2. Exclusions. The foregoing restrictions will not apply with respect to any information that: (a) was or becomes publicly known through no fault of Recipient; (b) was rightfully known to Recipient prior to receipt from Discloser; (c) becomes rightfully known to Recipient from a source other than Discloser that does not owe any confidentiality obligation to Discloser; or (d) is independently developed by Recipient prior to such disclosure. In addition, Recipient may disclose Confidential Information of Discloser to the extent approved by Discloser in advance in writing, or (e) Recipient is legally compelled to disclose such Confidential Information, in which case, prior to any such compelled disclosure, Recipient must give Discloser

written notice and cooperate fully with Discloser in protecting against such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. For avoidance of doubt, nothing in this Section 5 will limit or prevent either party from exercising the licenses and other rights expressly granted to such party under this EULA. ColorTokens recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

3. Privacy Policy. Personal information included in the Customer Content will be dealt in accordance with Company's privacy policy which may be non-materially updated from time to time, attached hereto and and published at ColorTokens website here.

6. THIRD PARTY PRODUCTS

If End User uses the ColorTokens Software in conjunction with third party products, it is responsible for complying with the third-party providers' terms and conditions and privacy policies, and all such use is at End User's own risk. The End User's use, rights, and obligations in respect of third-party product/software is governed by its applicable end user license agreement. Company does not provide guarantee or support ongoing integration for products that are not a native part of the ColorTokens Software.

7. REPRESENTATIONS AND WARRANTES; DISCLAIMERS

1. Warranty. ColorTokens warrants that (a) for a period of 90 days from the date the End User first accesses the ColorTokens Software, the same will perform substantially in accordance with the requirements and specifications set forth in ColorToken's applicable documentation; and (b) ColorTokens will provide the ColorTokens Software substantially in accordance with the service levels and other requirements as per ColorTokens' then current standard Product Support policy as set forth in the applicable Order. Notwithstanding anything to the contrary in this EULA, in the event of any established breach by ColorTokens of the foregoing warranties, End Users sole and exclusive remedy and ColorTokens' entire liability for any breach of the foregoing warranty shall be, at ColorTokens' option (a) to correct the nonconformance in the ColorTokens Software, and ColorTokens will have no other liability arising from any such breach (b) ColorTokens will use commercially reasonable efforts to provide End User with a correction of or a reasonable procedure to circumvent the nonconformity (c) extend the subscription period by the number of days affected by the nonconformity after it has been corrected. Any nonconformity must be promptly reported to ColorTokens within the Warranty Period in a written form and with supporting information reasonably requested by ColorTokens to enable it to verify, diagnose and correct the nonconformity.

Notwithstanding the foregoing, the warranties set forth in this Section do not apply to any Evaluation Use.

2. Exclusions. The warranty set forth above shall not apply if the failure of the ColorTokens Software results from or is otherwise attributable to: (i) repair, maintenance or modification of the ColorTokens Software by persons other than ColorTokens or its designee; (ii) accident, negligence, abuse or misuse of a ColorTokens Software; (iii) use of the ColorTokens Software other than in accordance with Software specifications; (iv) improper installation or site preparation or your failure to comply with environmental and storage requirements set forth in the Software including, without limitation, temperature or humidity ranges; or (v) use of the ColorTokens Software including but not limited to, failure of electrical systems, fire or water damage.

3. Disclaimer. COLORTOKENS SOFTWARE IS PROVIDED "AS IS" AND COMPANY MAKES NO (AND HEREBY DISCLAIMS ALL) REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITATION OF THE FOREGOING, COMPANY DOES NOT REPRESENT OR WARRANT THAT ACCESS TO THE COLORTOKENS SOFTWARE, WILL BE UNINTERRUPTED, ERROR-FREE OR SECURE OR THAT ANY DATA WILL NOT BE SUBJECT TO DAMAGE, CORRUPTION, DESTRUCTION, LOSS OR DELETION.

8. INDEMNIFICATION

1. Indemnification by Company. Subject to any exclusive remedies and limitations of liability set forth elsewhere in this EULA, and only during the term of the EULA, Company will defend End User against any third-party claim, lawsuit, or proceeding (a "**Claim**") when solely attributable that the ColorTokens Software, when used in the form provided by Company and in accordance with this EULA, infringes the intellectual property rights of such third party, and Company will pay damages as awarded in final judgment against End User based on such Claim and any final settlements amount arising from such Claim. As an express condition to ColorTokens' obligation under this Section 8.1, End User must: (i) promptly notify ColorTokens in writing of the claim; (ii) grant ColorTokens sole control of the defence and settlement of the claim; and (iii) provide ColorTokens, at ColorTokens' expense, with all assistance, information and authority reasonably required for the defence and settlement of the claim. End User has the right to retain counsel, at ColorTokens

expense on confirmation in writing, to participate in the defence or settlement of any claim. ColorTokens will not be bound by any settlement or compromise entered into without ColorTokens' express prior written consent. If the End User fails to notify the Company of the indemnifiable proceeding, the Company will be relieved of its indemnification obligations to the extent it was prejudiced by the End User's failure to provide notice. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

2. Remedy. If ColorTokens Software becomes, or in ColorTokens opinion is likely to become, the subject of a claim, then ColorTokens may, at its sole option and expense and provided that Customer abides by the obligations set forth in section 2.2 (Usage Restrictions): (i) retains the right for End User to continue using the ColorTokens Software; (ii) replace or modify the copy(ies) of such ColorTokens Software to avoid the claim; or (iii) if options (i) and (ii) cannot be accomplished despite ColorTokens reasonable efforts, then ColorTokens may terminate rights of the End User, its Authorized Users or its authorized channel partners including but not limited to resellers, distributors, teaming partners, consultants, consulting companies, managed security services providers and ColorTokens' obligations hereunder with respect to the ColorTokens Software.

3. Exclusions. Notwithstanding anything to the contrary in this EULA, Company will have no obligation to defend End User or pay any damages or settlement amounts and End User will defend, indemnify and hold harmless Company with respect to any Claim arising from or related to: (a) End User's or an Authorized User's or its authorized channel partners' such as but not limited to resellers, distributors, teaming partners, consultants, consulting companies, managed security services providers use of the ColorTokens Software, other than in accordance with this EULA or the Order (b) any Evaluation Use by End User or any Authorized Users or its authorized channel partners such as but not limited to resellers, distributors, teaming partners, consultants, consulting companies, managed security services providers; (c) any products or services that End User provides to its customers through or using the ColorTokens Software (including any breach or alleged breach by End User of its obligations to such customers); (d) the combination of the ColorTokens Software with any software, hardware, data, technology, services, or other materials not provided by Company; (e) any modifications or additions to ColorTokens Software by anyone other than Company; or (f) any End User Content (all of the foregoing (a) through (f), "Excluded Claims"). THE FOREGOING TERMS STATE COLORTOKENS SOLE AND EXCLUSIVE LIABILITY AND CUSTOMERS SOLE AND EXCLUSIVE REMEDY FOR ANY THIRD-PARTY CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION.

9. LIMITATION OF LIABILITY

EXCEPT FOR BREACH BY EITHER PARTY OF SECTION 5 (CONFIDENTALITY), LIABILITY UNDER SECTION 8 (INDEMNIFICATION), OR BREACH BY CUSTOMER OF SECTION 2 (LICENSE GRANT AND RESTRICTIONS), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING BUSINESS INTERRUPTION OR LOSS OF INCOME, DATA, PROFITS, OR REVENUE, UNDER ANY THEORY OF LIABILITY AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE MAXIMUM LIABILITY OF COMPANY UNDER THIS EULA WITH RESPECT TO ANY CLAIM WILL BE LIMITED TO THE AMOUNT OF FEES PAID TO COMPANY BY CUSTOMER OR BY THE RELEVANT AUTHORIZED CHANNEL PARTNER FOR THE ORDER IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT GIVING RISE TO THE APPLICABLE CLAIM. IN ADDITION, NOTWITHSTANDING ANYTHING IN THIS EULA TO THE CONTRARY, COMPANY WILL HAVE NO LIABILITY FOR ANY DAMAGE CAUSED BY ANY EXCLUDED CLAIMS. THE MAXIMUM LIABILITY OF COMPANY UNDER THIS EULA WITH REGARDS TO THE COLORTOKENS SOFTWARE BEING USED SOLELY FOR EVALUATION USE, WILL BE LIMITED TO USD ($) 500. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

10. TERM AND TERMINATION

1. Term. End User's license begins on the ColorTokens Software license activation date and continues until terminated or until the end of the term specified in the Order. If End User is using the ColorTokens Software for Evaluation Use only, then this EULA will expire at the end of the applicable evaluation period set forth in such Order or terminated otherwise by ColorTokens, unless End User enters into a further Order for a paid Subscription.

2. Termination for Default.
   When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, ColorTokens shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

3. Effect of Termination. Upon expiration or termination of this EULA, End User's right to access and use the ColorTokens Software will immediately terminate, and End User and its Authorized Users will immediately cease all use and uninstall the ColorTokens Software, and each party will destroy or return any materials then in its possession or control containing or constituting Confidential Information of the other party. Following termination, Company may destroy or otherwise dispose of any End User Content residing on the ColorTokens Software. Upon Company's termination for End User's material breach of the EULA, if there are any outstanding Fee for license Subscriptions, End User or its approved channel partner will pay Company any unpaid fees till the effective date of termination. Termination of this EULA by either party will not act as a waiver of any breach of this EULA and will not act as a release of either party from any liability for breach of such party's obligations under this EULA. Except where otherwise specified, the rights and remedies granted to a party under this EULA are cumulative and in addition to, and not in lieu of, any other rights or remedies that the party may possess at law or in equity.

4. Survival. The following Sections will survive any expiration or termination of this EULA: 1 (Definitions), 2.2 (License grant Restrictions), 3 (Audit), 4 (Ownership), 5 (Confidentiality), 9 (Limitation of Liability), and 10 (Termination) and 11 (General).

11. GENERAL

1. Interpretation. For purposes of interpreting this EULA, the captions and section and paragraph headings used in this EULA are inserted for convenience only and will not affect the meaning or interpretation of this EULA.

2. Assignment. End User is not permitted to assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this EULA or any of its rights or obligations under this EULA without the prior written consent of the Company. Any purported assignment, sale, transfer, delegation, or other disposition by the End User, except as permitted herein, will be null and void. Subject to the foregoing, this EULA will be binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns.

3. Reserved.

4. Waiver. The waiver by either party of a breach of or a default under any provision of this EULA will be in writing and will not be construed as a waiver of any subsequent breach of or default under the same or any other provision of the EULA, nor will any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any other right or remedy.

5. Severability. If the application of any provision or provisions of this EULA to any particular facts or circumstances is held to be invalid or unenforceable by any court of competent jurisdiction, then (a) the validity and enforceability of such provision or provisions as applied to any other particular facts or circumstances and the validity of other provisions of this EULA will not in any way be affected or impaired thereby, and (b) such provision or provisions will be reformed without further action by the parties hereto and only to the extent necessary to make such provision or provisions valid and enforceable when applied to such particular facts and circumstances.

6. Relationship of the Parties. The use of the word partner does not imply a partnership relationship between Company and the authorized channel partner/End User. This EULA will not be construed as creating an agency, partnership, joint venture, or any other form of association, for tax purposes or otherwise, between the parties; the parties will at all times be and remain independent contractors and neither party nor its agents have any authority of any kind to bind the other party in any respect whatsoever. For clarity, nothing in this EULA prevents Company from using subcontractors in connection with provision of the ColorTokens Software and End User agrees that Company may use such subcontractors.

7. Force Majeure. In accordance with GSAR Clause 552.212-4(f), Neither party will be liable under this EULA by reason of any failure or delay in the performance of its obligations hereunder (except for the payment obligations) on account of events beyond the reasonable control of such party,
which may include without limitation any cyber breach incident (denial-of-service, attacks), epidemics, pandemics, strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes and material shortages (each a "**Force Majeure Event**"). Upon the occurrence of a Force Majeure Event, the non-performing party will be excused from any further performance of its obligations (except payment obligations) affected by the Force Majeure Event for so long as the event continues, and such party continues to use commercially reasonable efforts to resume performance and notifies the other party of such event.

8. Export Laws. End User will comply fully with all relevant export laws and regulations of the United States and any other country ("**Export Laws**") where End User uses the ColorTokens System or any portion thereof. End User certifies that End User is not on any of the relevant U.S. government lists of prohibited persons, including the Treasury Department's List of Specially Designated Nationals and the Commerce Department's List of Denied Persons or Entity List. End User further certifies that End User will not export, re-export, ship, transfer or otherwise use the ColorTokens System or any portion thereof in any country subject to an embargo or other sanction by the United States, including Iran, Syria, Cuba, Sudan and North Korea and that End User will not use the ColorTokens System or any portion thereof for any purpose prohibited by the Export Laws.

9. Government End User Rights. End User acknowledges that all software and documentation included in the ColorTokens Software was developed entirely at private expense and that no part of the ColorTokens Software was first produced in the performance of a government contract. End User agrees that all such software

and documentation and any derivatives thereof are “Commercial Items” as defined in 48 C.F.R. § 2.101, and if End User is the Government, then such use, duplication, reproduction, release, modification, disclosure or transfer of this commercial product and data, is restricted in accordance with 48 C.F.R. § 12.211, 48 C.F.R. § 12.212, 48 C.F.R. § 227.7102-2, and 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. § 12.211, 48 C.F.R. § 12.212, 48 C.F.R. § 227.7102-1 through 48 C.F.R. § 227.7102-3, and 48 C.F.R. §§ 227.7202-1 through 227.7202-4, as applicable, the software and documentation included in the ColorTokens Software are provided to Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other users pursuant to this EULA and any related agreement(s), as applicable. Accordingly, End User will have no rights in the ColorTokens Software or any portion thereof except as expressly agreed to in writing by End User and Company.

10. Entire agreement. This EULA, including any Orders, constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, and agreements, whether oral or written, and all communications between the parties relating to the subject matter of this EULA and all past courses of dealing or industry custom. No amendment or modification of any provision of this EULA will be effective unless in writing and signed by a duly authorized signatory of End User and Company referring explicitly to the provision amended or modified.

11. Data Privacy. ColorTokens processes and uses personal data and End User data to deliver, analyze, support, and improve the Software and as otherwise permitted in this EULA. ColorTokens will maintain appropriate administrative, physical, and technical safeguards, which are designed to protect the security, confidentiality and integrity of personal data and customer data processed by ColorTokens. ColorTokens may share personal data and customer data with third party service providers consistent with ColorTokens privacy statement to assist in providing and improving the software. ColorTokens contracts only with third party service providers that can provide the same level of data protection and information security that ColorTokens provides. To the extent Your use of the ColorTokens Software requires it, You are responsible for providing notice to, and obtaining consents from, individuals regarding the collection, processing, transfer and storage of their data through Your use of the ColorTokens Software.

    Anonymized data in the Company’s cloud is used for debugging, quality control and training purposes.

12. Notices. All notices required or permitted under this EULA will be in writing and delivered in person or via email, by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested, and in each instance will be deemed given upon receipt. For the Company, all notices will be sent to the addresses mentioned below, unless otherwise mentioned in the applicable Order.

To Company: Attn: Office of the General Counsel
ColorTokens, Inc.
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