



KHOROS MASTER SERVICE AGREEMENT

THANK YOU FOR CHOOSING KHOROS! PLEASE READ THIS AGREEMENT CAREFULLY. BY SIGNING THIS AGREEMENT, SCOPE OF WORK, OR A SERVICE ORDER, YOU AGREE TO THESE TERMS AND CONDITIONS.

This Master Service Agreement (“MSA”) is an agreement between Khoros, LLC and its subsidiaries (“Khoros”) and the company/business entity executing the MSA, a Scope of Work or a Service Order (“Customer”) relating to Khoros’s provision of and Customer’s use of Khoros’s software and/or services. The MSA’s “Effective Date” is when Customer signs the MSA, Scope of Work or the Service Order.

CUSTOMER ACKNOWLEDGES THAT IT HAS READ THE MSA, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS. THE PERSON EXECUTING THE MSA ON CUSTOMER’S BEHALF REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND CUSTOMER TO THESE TERMS AND CONDITIONS.

1. THE SERVICES

1.1 **The Services.** Khoros agrees to provide: (a) software-as-a-service (“Subscription Services”) for certain software applications (each application plus its documentation, developer documentation, user interface, proprietary associated tools, and programming, an “Application”) to “Authorized Users” (defined as any individual who uses the Application on Customer’s behalf or through Customer’s account or passwords) detailed in a signed order form (“SO”); and/or, if applicable, (b) all enablement, configuration, customization, integration, data import, export, and extraction, monitoring, technical assistance, maintenance, training, strategic services, or other services (“Professional Services”) detailed in a signed SO or Statement of Work (“SOW”). Subscription Services and Professional Services are referred together as “Services.”

1.2 **Service Levels.** Khoros provides its Subscription Services in accordance with its Service Level Agreement (“SLA”) (<https://khoros.com/khoros-policies-and-guidelines>) gives Customers remedies for failure of/issues with the Application. Those remedies are Customer’s sole remedy for any failures/issues specified in the SLA. SLA specified failures/issues that are remedied in accordance with the SLA are not considered material breaches. If Khoros issues service credits pursuant to the SLA or as goodwill, those credits apply to outstanding or future invoices only and are forfeit upon MSA termination. Khoros is not required to issue refunds or to make payments against credits, including, without limitation after MSA termination.

1.3 **Application Changes & Revisions.** Khoros may make changes to the Applications, features and functions, or the SLA when it deems necessary or useful to maintain or enhance (a) the quality, delivery, or security of the Application; (b) increase the competitive strength of the Application; or (c) improve the Application’s efficiency or performance. Except for changes made by a Social Media Network (as defined below), in the event a change removes features or functionality provided in a SO, the parties agree to negotiate an amendment to the Subscription Services. If the parties cannot reach an agreement, Customer may terminate the relevant SO pursuant Section 11.3 (Termination for Cause or Material Breach).

1.4 **Third-Party Applications.** Khoros may offer Customer the ability to use/integrate third-party applications with an Application. Customer agrees that it may have to enter into separate agreements or consents with the third-party application. Khoros must pre-approve third-party integration and, if applicable, has discretion to throttle back how much data a third-party application may call from a Customer instance in order to maintain the security, efficacy, speed, integrity, and operability of the Application, especially for those third-party applications that Customer chooses to integrate with which Khoros does not have a certified partnership. Customer agrees that it will not tie any third-party applications into an Application without providing Khoros with notice. For third-party applications that Customer wants to incorporate into the Application, Customer gives Khoros permission to allow the third-party applications to have access to Customer Data (as defined below) as is necessary for the operation of the third-party application with the Application. Customer agrees that Khoros is not responsible for any issues (including data privacy), breaches, or operability of third-party applications and that any issues resulting from or attributable to a third-party application will not be considered a breach by Khoros.

2. APPLICATION ACCESS

2.1 **Authorized Users.** Customer may allow the number of Customer’s employees and/or contractors as indicated on a SO to use the Application. Authorized User subscriptions are for one person only and cannot be shared or used by more than one Authorized User (but may be reassigned, in its entirety).

2.2. **Affiliates.** An “Affiliate” means an entity owned or controlled by Customer or under common ownership with Customer. “Control” means that Customer has more than 50% voting interests in the Affiliate. Any Affiliate may sign a SO/SOW that references this MSA. In such a case, this MSA governs the SO/SOW and the term “Customer” in this MSA refers to the Affiliate signing the SO/SOW.

2.3 **Authorized User Conditions of Access & Use.** As a condition to access and use of an Application each Authorized User shall agree to abide by: (a) the terms of this MSA; (b) Khoros’s Acceptable Use Policy (“AUP”) (<https://khoros.com/khoros-policies-and-guidelines>); and (c) the terms of service and/or use of a Social Media Network. “Social Media Network” means social media providers such as Twitter, Facebook, Instagram, Google, WhatsApp, and other providers and websites that solicit content from users, make such content available for resyndication or publication via their application programming interface (“API”), and are utilized by Customer and Authorized Users through the Applications.

3. CUSTOMER’S RESPONSIBILITIES & RESTRICTIONS

3.1 **Customer Responsibility.** Customer is responsible for: (a) all users assigned to its Application, whether or not Customer has authorized the particular use or user, and regardless of Customer’s knowledge of such use or user; (b) obtaining and maintaining at all relevant times necessary consents from individuals and/or third-parties for Customer’s intended use of information, data, personal data, and other content that Customer intends to use in connection with the Services; (c) cooperating with Khoros and providing all information and access that Khoros reasonably needs to provide the Services; (d) securing its Customer account, access, and passwords; (e) ensuring that Authorized Users are complying with applicable terms in this MSA and SO/SOWs; and (f) complying with the current Social Media Network terms of service at all times while using the Applications. Customer agrees that Khoros does not control the Social Media Networks. Customer also agrees that content posted by third parties to a Social Media Network (“Social Media Content”) is not created or edited by Khoros (unless done on behalf of the Customer as part of negotiated Professional Services in an SOW) and that Khoros has no responsibility or liability for such Social Media Content. Customer, not Khoros, is responsible for any losses, damages, costs, expenses, or claims that result from stolen, lost, or phished passwords of Customer’s Authorized Users or from any security breaches that result from Customer’s action or omissions with respect to systems and processes controlled by Customer. Customer shall notify Khoros immediately of any known or suspected phishing attempt, password compromise, and/or breach of its security and shall use best efforts to stop said breach.

3.2. **Agreement to Abide by Usage Limits.** Customer agrees to abide by limitations on Authorized Users and usage limits that are detailed in a SO. If Khoros determines that Customer has allowed access to the Application to non-Authorized Users (through login sharing or otherwise) or has used the Application in excess of usage limits described in a SO, Customer agrees to pay Khoros additional fees for such unauthorized or additional usage.

3.3 **Customer Restrictions.** Customer shall not: (a) copy or republish the Services, Applications, associated software tools (such as the Studio tool in the community Application) or developer documentation, reverse engineer, decompile, disassemble, or otherwise attempt to derive or copy the source code of the Application or its features and tools to create its own replacement Application that is similar to or derived from the Application provided by Khoros to Customer; (b) use the Application for service bureau or time-sharing purposes or in any other way allow third parties who are not approved Affiliates or Authorized Users to use or exploit the Application; (c) provide Application passwords or other log-in information to any third party or to share a login or password among other Customer or Affiliate employees or agents; (d) share non-public Application features, technology, content, or documentation with any third party or individual; (e) access the Application in order to build or allow another third party to build a competitive or replacement product or service, improve a competitive product or service, build a product using similar ideas, features, functions or graphics of the Application, to copy any ideas, features, functions or graphics of the Application, create derivative work, or link to the Application to provide a complimentary service absent Khoros’s express written permission; (f) engage in web scraping, API scraping, or data scraping on or related to the Application, whether publicly accessible or not, including, without limitation, collection of information through any software that simulates human activity or any bot or web crawler; or (g) take any other action not expressly permitted under this MSA. Customer shall notify Khoros immediately of any known or suspected breach of this section. In the event that it suspects any breach of these requirements, including, without limitation, by Customer, a third party, or any individual user, Khoros may suspend such third-party or individual’s access to the Application without advanced notice, in addition to such other remedies as Khoros may have.

3.4 **Compliance with Laws.** The parties will comply with all applicable laws, including, without limitation, laws governing the protection of personally identifiable information and other laws applicable to data protection and privacy. This includes, but is not limited to, obtaining required consent, providing required privacy notices, and taking reasonable steps to prevent and discourage users from providing sensitive personal data (e.g. health and financial information).

4. INTELLECTUAL PROPERTY, PROPRIETARY RIGHTS, FEEDBACK & USE OF DATA

4.1 **Ownership of Customer Data.** Customer owns right, title, and interest to Customer Data and has responsibility for its Customer Data. "Customer Data" means data in electronic form or information submitted by Customer, Customer's Authorized Users, and/or by Customer's customers or end users. Customer Data also includes any Customer provided software, logos, or other Customer owned materials inserted or added to the Application (e.g. headers, footers, sidebars, graphics). Customer grants to Khoros a non-exclusive, transferable, sublicensable, worldwide, and royalty-free license to use Customer Data to provide Services to Customer, to monitor the Applications and Services, and/or improve the Applications and Services (after such data is anonymized and aggregated). Customer acknowledges that this license is limited to the term of the MSA and attendant SO/SOW and that Customer will not have access to Customer Data from Khoros following the expiration or termination of the MSA and/or relevant SO/SOW.

4.2 **Ownership of the Applications & Services.** Khoros owns and retains right, title, and interest in and to the Applications and Services. Customer has no intellectual property license or rights to or in the Services, Applications, or their components. Customer recognizes that the Services, Applications, and their components are protected as or by trade secrets, copyrights, patents, and/or other laws.

4.3 **Feedback.** "Feedback" refers to any suggestion or idea for improving or otherwise modifying any of Khoros's products or services that Customer, Authorized Users, or end users provide to Khoros, and nothing in this MSA or in the parties' dealings arising out of or related to this MSA restricts Khoros's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Customer, the Authorized User, or end user in question. Khoros will not disclose Customer's Confidential Information (as defined below) to implement such Feedback. Accordingly, Customer gives Khoros a royalty-free, worldwide, irrevocable, and perpetual license to use and incorporate into the Application and Services any Feedback that Customer contends it owns.

4.4 **Khoros's Use of Customer Data.** Customer permits Khoros to collect and analyze data and other information (including Customer Data) relating to the provision, use, and performance of various aspects of the Services; and Customer agrees that Khoros may (after such data is anonymized and aggregated): (a) use such information and data to improve and enhance the Services, Applications, and for other development, diagnostic, integrative, and corrective purposes in connection with the Services and Khoros offerings; and (b) use, reproduce, or publicize Anonymized Data in any way, in its sole discretion. "Anonymized Data" refers to Customer Data with the following removed in such a way that it can no longer reasonably identify a particular individual or entity: personally identifiable information, the names and addresses of Customer, and any of Customer's users or customers.

5. CUSTOMER DATA, PRIVACY, & PROTECTION

5.1 **Customer Data.** Except as noted in this MSA or unless it receives Customer's prior written consent, Khoros: (a) shall not access, process, or otherwise use Customer Data other than as necessary to facilitate the Application; and (b) shall not intentionally grant any third party access to Customer Data, except Khoros subcontractors that are subject to a reasonable nondisclosure agreement and third-parties to whom Customer has requested Khoros provide access. However, Khoros may disclose Customer Data if required by law or governmental authority. Khoros shall give Customer prompt notice (unless such notice is legally prohibited) of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.

5.2 **Data Accuracy.** Khoros has no responsibility or liability for the accuracy of data uploaded to the Application by Customer, including without limitation Customer Data and any other data uploaded by Authorized Users or end users of social media or communities.

5.3 **Application Deactivation & Data Deletion.** Khoros will immediately disable Customer's access to Applications

if Customer breaches this MSA or if Customer's account is delinquent, suspended, expired, or terminated. And within 30 days of the disablement, Khoros may permanently erase Customer Data and decommission Customer's Application.

5.4 **Data Protection.** Customer acknowledges that the Services are designed and provided for the purpose of sharing information and enabling public communication among individuals and with and relating to the Customer. The Services are not intended to be used for the storage, management, or processing of sensitive personal information. The parties agree that regarding the processing of any personal data, Customer is the "controller" and Khoros is the "processor" as such terms are defined in Khoros's Data Processing Agreement ("DPA"). The DPA is incorporated into and subject to the terms of this MSA.

6. CONFIDENTIAL INFORMATION

6.1 **Confidential Information.** "Confidential Information" is: (a) any document the disclosing party marks "Confidential"; (b) the Application documentation (including developer documents) and support programs for the Applications (including the Studio tool associated with the community Application), whether or not marked or designated confidential; and (c) any other nonpublic, sensitive information the receiving party should reasonably consider a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the receiving party's possession at the time of disclosure without obligations of confidentiality; (ii) is independently developed by the receiving party without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of the receiving party's improper action or inaction; or (iv) is approved for release in writing by the disclosing party. The receiving party agrees that Confidential Information includes the disclosing party's trade secrets.

6.2 **Exception to Confidentiality of This MSA.** This MSA and its SOs/SOWs may be disclosed in confidence to legal counsel or professional advisors who need to know in context of a merger, financing, audit, or similar transaction.

6.3 **Nondisclosure & Non-Use.** Neither party shall use Confidential Information for any purpose other than in connection with its use of the Applications (the "Purpose"). The receiving party: (a) shall not disclose Confidential Information to any employee or contractor of the receiving party unless such person needs access to such information as part of their job and is bound to this confidentiality clause; and (b) shall not disclose Confidential Information to any other third party without the disclosing party's prior written consent. Further, the receiving party shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. The receiving party shall promptly notify the disclosing party of any misuse or misappropriation of Confidential Information that comes to the receiving party's attention. However, the receiving party may disclose Confidential Information if required by law or governmental authority. The receiving party shall give the disclosing party prompt notice (if legally permissible) of any such demand and reasonably cooperate with the disclosing party in any effort to seek a protective order or otherwise to contest such required disclosure, at the disclosing party's expense.

6.4 **Injunction.** The parties agree that breach of this confidentiality section would cause irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, the disclosing party is entitled to injunctive relief against the breach or threatened breach, without proving actual damage or posting a bond/security.

6.5 **Retention of Rights.** Each party retains right, title, and interest in and to all its Confidential Information. The parties do not transfer ownership of Confidential Information or grant a license to such information unless specified in this MSA.

7. PAYMENT

7.1 **Fees.** Customer shall pay Khoros the fee provided in each SO (the "Subscription Fee") and/or fees in each SOW ("Professional Services Fee"). Khoros's invoices are payable within 30 days of issuance. For late payment, Customer shall pay interest charges from the time the payment was due at the rate that is the lower of 1% per month or the highest rate permissible under applicable law. Khoros is not required to refund the Subscription Fee, in whole or in part, unless specifically stated in this MSA.

7.2 **Expenses.** Customer will reimburse Khoros for its reasonable out-of-pocket travel and related expenses incurred in performing the Services. Khoros will notify Customer prior to incurring such expenses.

7.3 **Payment Disputes.** If Customer disputes the accuracy of any fees or expenses contained on an invoice, Customer must provide Khoros with notice of the disputed amount within 15 days after receiving the invoice. Customer agrees to work with Khoros to resolve the dispute within 5 days. If Customer does not dispute an invoice within 15 days, Customer waives its right to dispute that invoice. If Customer only disputes a portion of an invoice, the undisputed amount is payable to Khoros on time.

7.4 **Taxes.** Customer shall pay and be liable for all taxes relating to Khoros's provision of Services. Khoros shall pay and be liable for taxes based on its net income or capital.

7.5 **Customer Purchase Orders.** If Customer requires an internal purchase order to pay the Subscription Fee and/or Professional Service Fee, Customer agrees that it will issue a purchase order within 5 days after the signing of a SO/SOW. For the avoidance of doubt, Customer's payment obligations are not dependent on the issuance of a purchase order.

7.6 **Suspension for Non-Payment.** Except for disputed fees that are in the process of resolution, Khoros may, without limiting its other remedies, immediately suspend the Services if Customer fails to timely pay Khoros and if Customer has not entered into a separate understanding with Khoros concerning the late payment. Customer agrees that Khoros is not liable to Customer (or any third party) for any liabilities, claims, or expenses arising from or relating to suspension of the Services resulting from Customer's nonpayment. Non-payment of undisputed fees is a material breach of this MSA.

8. REPRESENTATIONS & WARRANTIES

8.1 **Representations & Warranties Made by Khoros to Customer.** Khoros represents and warrants that: (a) it owns the Applications and of each and every component and feature of the Applications, or has a valid license for same, and that it has and will maintain the full power and authority to grant the right to use the Applications without the further consent of a third party; (b) the Applications will substantially conform to the specifications noted in Application documentation; and (c) Professional Services will be performed in a reasonable manner applicable to industry standard. If Khoros breaches any of these warranties, Khoros shall, at its own expense: (i) secure for Customer the right to continue using the Application; (ii) replace or modify the Application to make it noninfringing; (iii) terminate the infringing features of the Application and refund to Customer any prepaid fees for such features, in proportion to the portion of the term left after such termination; (iv) modify the Application to ensure its substantial conformance; or (v) for Professional Services, work in good faith with Customer to improve the performance. In conjunction with Customer's indemnity rights and right to terminate for cause where applicable, this is Khoros's sole obligation and liability, and Customer's sole remedy, for breach of the warranties in this section. These representations and warranties do not apply to use of the Application in combination with hardware or software not provided by Khoros.

8.2 **Representations & Warranties Made by Customer to Khoros.** Customer represents and warrants that: (a) it has the full right and authority to enter into, execute, and perform its obligations under this MSA; (b) it has not provided any inaccurate information about itself to Khoros or through the Application; and (c) it uses anti-virus protection on any Customer-owned devices that will access the Applications.

8.3 **WARRANTY DISCLAIMERS.** THE EXPLICIT WARRANTIES SET FORTH IN THE SLA AND IN SECTION 8.1 ABOVE ARE THE ONLY WARRANTIES MADE BY KHOROS. KHOROS MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. FURTHER: (A) KHOROS DOES NOT REPRESENT OR WARRANT THAT THE APPLICATION WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (B) KHOROS DOES NOT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES.

8.4 **SOCIAL MEDIA NETWORK DISCLAIMER.** CUSTOMER ACKNOWLEDGES THAT THOSE APPLICATION FEATURES THAT INTEROPERATE WITH SOCIAL MEDIA NETWORKS DEPEND ON THE CONTINUING AVAILABILITY OF THOSE SOCIAL MEDIA NETWORKS' API AND PROGRAM. SERVICES MAY BE IMPACTED, INTERRUPTED, OR CEASE IF A SOCIAL MEDIA NETWORK CEASES TO MAKE ITS API OR PROGRAM AVAILABLE ON REASONABLE TERMS OR IF A SOCIAL MEDIA NETWORK EXPERIENCES AN OUTAGE, MALFUNCTION, OR CHANGE IN THEIR SERVICES, PRACTICES, OR FUNCTIONALITY.

9. INDEMNIFICATION

9.1 **Indemnification of Khoros by Customer.** Customer shall defend, indemnify, and hold harmless Khoros and Khoros Associates (as defined below) against any third party claim, suit, or proceeding arising out of or related to Customer's alleged or actual use of, misuse of, or failure to use the Application not in accordance with the MSA, including without limitation: (a) claims by users, Social Media Networks, Customer's employees or contractors, or Customer's own customers; (b) claims related to unauthorized disclosure or exposure of personally identifiable information or other private information, including Customer Data; (c) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality right by written material, images, logos or other content uploaded to the Application through Customer's account, including without limitation by Customer Data; and (d) claims that use of the Application through Customer's account harasses, defames, defrauds, or unlawfully surveils a third party or violates the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising. Customer's obligations in this section include retention and payment of attorneys and payment of court costs, as well as settlement at Customer's expense and payment of judgments. Khoros will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing affirmative obligations. ("Khoros Associates" are Khoros's officers, managers, directors, shareholders, parents, subsidiaries, agents, employees, successors, and assigns.)

9.2 **Indemnification of Customer by Khoros.** Khoros shall defend, indemnify, and hold harmless Customer against any third-party claim, suit, or proceeding alleging that the Application infringes any intellectual property rights of a third party. This obligation does not apply to portions of the Application or Services: (a) not provided by Khoros; (b) made in whole or part in accordance with Customer's specifications or modifications; or (c) where Customer's use of the Application or Services is not in accordance with this MSA or related SO/SOW.

9.3 **Indemnification Procedure.** These indemnification obligations are subject to the following conditions: (a) prompt written notice from one party to the other; (b) complete control of the defense and settlement by the indemnifying party (provided that the indemnifying party may not settle any claim without the indemnified party's consent, which may not be unreasonably withheld); and (c) reasonable cooperation by the indemnified party.

9.4. **Exclusive Remedy.** This indemnification section states the indemnifying party's sole liability to and the indemnified party's exclusive remedy against the other party for any claims described in this section.

10. LIMITATION OF LIABILITY

10.1 **Mutual Liability Cap.** EXCEPT FOR LIABILITY FOR BREACH OF INTELLECTUAL PROPERTY, PAYMENT OF FEES AND EXPENSES, INDEMNIFICATION, AND BREACH OF CONFIDENTIALITY, NEITHER PARTY'S CUMULATIVE LIABILITY FOR DIRECT DAMAGES FOR ALL CLAIMS ARISING OUT OF OR RELATED TO THIS MSA SHALL EXCEED THE AMOUNT PAID BY THE CUSTOMER FOR THE SERVICE IMPLICATED DURING THE 12 MONTHS PRIOR TO THE EVENT THAT TRIGGERS LIABILITY.

10.2 **Excluded Damages.** TO THE EXTENT PERMISSIBLE BY LAW, NEITHER PARTY SHALL BE LIABLE FOR LOST PROFITS OR LOSS OF BUSINESS OR FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, EXCEPT FOR LIABILITY RELATED TO CUSTOMER RESTRICTIONS AND RESPONSIBILITIES.

10.3 **Clarifications & Disclaimers.** THE LIABILITIES LIMITED BY THIS SECTION APPLY: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; AND (c) EVEN IF KHOROS IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE.

11. TERM, SUSPENSION, & TERMINATION

11.1 **Term.** The MSA's term (the "Term") will commence on the Effective Date and continue for the period set forth in each SO/SOW under this MSA. The Term of each SO/SOW automatically renews for the same terms and duration unless either party refuses such renewal by written notice 90 or more days before the end of the then-current Term.

11.2 Suspension for Ongoing Harm. Khoros may suspend delivery of the Services if Khoros reasonably concludes that Customer or another third-party's access to or use of the Services is causing immediate and ongoing harm to Khoros, Customer, or others. In this extraordinary case, Khoros agrees to immediately notify Customer and use best efforts to work with Customer to resolve the issue. Khoros shall not be liable to Customer or to any third party for any liabilities, claims, or expenses arising from or related to such suspension.

11.3 Termination for Cause or Material Breach. Either party may terminate the MSA for cause, as noted in the MSA, or the other's material breach by written notice detailing the date and nature of the material breach. Termination will be effective in 30 days after the notice unless the other party first remedies the material breach. If Khoros terminates this MSA due to Customer's material breach, then Customer shall pay Khoros, within 30 days, all remaining Subscription Fees due under this MSA, SO, and SOWs. If Customer terminates this MSA due to Khoros's material breach, Khoros shall pay Customer all unused, pre-paid amounts for Professional Services and a portion of pre-paid Subscription Fees for the remainder of the pre-paid subscription term under the SO being terminated. However, even if Customer terminates for cause, Customer shall still pay all fees accrued and incurred before the termination date. Further, either party may terminate this MSA and all SOs/SOWs if the other party becomes insolvent or ceases to conduct business without a successor.

11.4 Effects of Expiration or Termination. Upon the MSA's expiration or termination, Khoros will cease providing Services and Customer shall cease use of the Application and delete, destroy, or return all copies of Application documentation in its possession or control. The following survive expiration or termination: (a) any obligation of Customer to pay fees or amounts incurred before expiration or termination; (b) sections in this MSA relating to ownership, intellectual property, Feedback, use of Anonymized Data, confidentiality, warranty disclaimers, indemnification, and limitation of liability; and (c) any other MSA provision that must survive to fulfill its essential purpose. If only a SO/SOW is terminated, the other SOs/SOWs will remain in effect and this section will only apply to the terminated or expired SO/SOW.

11.5 Transition Assistance. Within 30 days of the expiration or termination of a SO, Khoros will, at Khoros's sole discretion, and if Khoros has not already done so on behalf of Customer: (a) at 1 time only and at no charge provide to Customer its community content if provided by an Application in standard industry format (XML or equivalent); or (b) enable on Authorized User to download its content used in the applicable Application in comma separated value (.csv) format. Customer agrees that content may only be available for extraction or downloading from certain Applications for the most recent 24 months. Khoros may provide additional transition help at Khoros's standard rates for Professional Services.

12. MISCELLANEOUS

12.1 Independent Parties. The parties are independent from each other and neither is the representative or agent of the other; accordingly, neither may make commitments on the other's behalf.

12.2 Notices. Khoros will send notices under this MSA to Customer's email contact provided in a SO/SOW. Customer will send notices under this MSA to legal@khoros.com and to its Khoros customer success manager. Notices are deemed received on the date that they are sent.

12.3 Force Majeure. No delay, failure, or default (other than a failure to pay Subscription Fees or Professional Services Fees when due) will constitute a breach of this MSA to the extent caused by acts of war, terrorism, hurricanes, pandemics, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, changes in accessibility or terms of use of Social Media Networks, failure of third-party networks or services, failure of the public internet, or other causes beyond the performing party's reasonable control.

12.4 Assignment & Successors. Neither party may assign this MSA or any of its rights or obligations, by operation of law or otherwise, without the other party's express written consent. However, either party may assign this MSA pursuant to a merger, consolidation, or sale of substantially all its assets; provided however that Customer may not assign this MSA to any of Khoros's competitors.

12.5 Severability. To the extent permitted by law, the parties waive any provision of law that would render any clause of this MSA invalid or otherwise unenforceable. If a provision of this MSA is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the

remaining provisions of this MSA will continue in full force and effect.

12.6 **No Waiver.** Neither party waives any of its rights under this MSA by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this MSA constitutes a waiver of any other breach of this MSA.

12.7 **Choice of Law & Jurisdiction.** This MSA and all related claims are governed by the laws of the State of Texas and applicable US federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of Austin, Travis County, Texas.

12.8 **Conflicts.** The MSA's terms govern in the event there is any conflict between the MSA terms and: (a) any Khoros policy posted online, including without limitation the AUP or Khoros's Privacy Policy; (b) any Customer-related terms and conditions not in this MSA or SO/SOW whether on Customer's website or in vendor agreements; and/or (c) any Customer purchase order issued prior to the MSA or in the future. The terms in a Khoros SO/SOW govern over the MSA's terms.

12.9 **Technology Export.** Customer shall not: (a) permit any third party to access or use the Application in violation of any US law or similar applicable regulation; or (b) permit any third party to access or use the Application in, or export such software to, a country subject to a US embargo.

12.10 **Publicity.** With Customer's written permission, Khoros may identify Customer as a customer and use Customer's name, logo, and trademark in Khoros's promotional materials. Customer may request that Khoros stop doing so by submitting an email to marketing@khoros.com. For the community Application, Khoros may use Customer's name and logo and each page shall contain a link to Khoros's website through Khoros's logo.

12.11 **Entire MSA.** This MSA and any related SO/SOW is the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter.

12.12 **Amendments.** This MSA may not be amended except by a written agreement signed by both parties that specifically references this MSA and is titled as an amendment. Customer's purchase orders, vendor agreements and terms, online agreements, policies, or similar documents and terms even if signed after this MSA and any SO/SOW, are not considered part of this MSA irrespective of what such orders, policies, and agreements provide about precedence. Khoros may revise its Privacy Policy, AUP, and SLA at any time by posting a new version on its website. Any new version will become effective on the date it is posted. However, if an amendment of these policies significantly and materially reduces Customer's rights or protections, Khoros will provide notice and consent to Customer.