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Graphite Enterprise

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Last Modified: November 20, 2024

Welcome to Graphite! The Graphite Terms of Service ("**Terms**") are entered into by and between Screenplay Studios Inc. dba Graphite ("**Graphite**," "**we**," or "**us**") and the individual or entity accepting the Terms ("**Customer**," "**you**," or "**your**"), governing Customer's access to and use of the Services (as defined below). Please read the Terms carefully, as they include important information about your legal rights. If you are accessing or using the Services on behalf of a company or other entity, (a) you represent and warrant that (i) you are an authorized representative of the entity with authority to bind the entity to the Terms, and (ii) you are accepting the Terms on behalf of the entity, and (b) all references to "Customer," "you" and "your" include you and that entity.

The Terms take effect on the earlier of: ① when you sign up through GitHub and complete the GitHub authorization flow that follows granting permissions to Graphite, thereby indicating Customer's acceptance of the Terms, ② when you obtain access to the Services via an Order (as defined below), or ③ when you access or use the Services (the "**Effective Date**").

PLEASE READ THE TERMS CAREFULLY BEFORE USING THE SERVICES. THEY CONTAIN
IMPORTANT INFORMATION ABOUT AUTOMATIC SUBSCRIPTION RENEWALS, WARRANTY
DISCLAIMERS, LIMITATIONS OF LIABILITY, THE RESOLUTION OF DISPUTES BY ARBITRATION AND
A CLASS ACTION WAIVER. BY INDICATING YOUR ACCEPTANCE OF THE TERMS OR BY
ACCESSING OR USING THE SERVICES, YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND
UNDERSTAND THE TERMS, AND (B) AGREE TO BE BOUND BY ALL THESE TERMS. IF YOU DO NOT
ACCEPT THE TERMS, YOU MAY NOT ACCESS OR USE THE SERVICES.

The Terms, together with the Orders, Data Processing Addendum available at
https://graphite.dev/files/DPA.pdf ("**DPA**"), and any exhibits or amendments thereto, are
collectively the "**Agreement**". In the event of a conflict between the terms of the Agreement,
the following order of precedence shall apply: (a) DPA, (b) Terms, (c) Orders, (d) exhibits or
amendments.

1) DEFINITIONS

"**Authorized User**" means an individual employee, consultant, contractor, or agent of Customer
based in the United States who is authorized by Customer to access and use the Services under
the rights granted to Customer pursuant to this Agreement and solely for the benefit of
Customer.

"**Customer Content**" means, other than Usage Data, data, content, code or other information
or materials, in any form or medium, that is submitted, transmitted or otherwise made available
by Customer or on behalf of Customer or any Authorized User to or through the Services.

"**Documentation**" means Graphite's user manuals and instructions, handbooks, guides,
technical information and other documentation relating to the Services made available to
Customer either electronically or in hard copy form, including at https://graphite.dev/docs, as
may be modified from time to time.

"**Graphite CLI**" means Graphite's proprietary command line tool for creating and managing
interdependent ("stacked") code changes in Git.

"**Graphite Platform**" means Graphite's website located at https://graphite.dev/ or other
designated websites or IP addresses for mobile applications communicated to Customer by
Graphite, and in each case, all subdomains thereof, and Graphite's source code review platform
(including the web dashboard) that connects directly with your GitHub account and code
repositories, and includes all related software, applications, script, code, interfaces, networks,
equipment, processes, keys, access tokens, graphics, multimedia files or text contained therein,
together with any fixes, updates, enhancements and upgrades thereto.

"**Law**" means any statute, law, ordinance, rule, regulation, code, order constitution, treaty,
common law, judgment, decree or other requirement of any federal, state, local or foreign
government or political subdivision thereof, or of any arbitrator, court or tribunal of competent
jurisdiction.

"**Orders**" means any ordering documents, online registration, order descriptions, plan selection
and pricing forms and upgrades, or order confirmations (including each of the foregoing
presented as pages on the Graphite Platform or as in-app notifications) relating to Customer's
purchase or other use of the Services.

"**Services**" means the Graphite Platform, Graphite CLI, and any other products and services
made available by Graphite.

"**Usage Data**" means all data and information related to Customer's interaction with and use of the Services, including but not limited to: technical logs, account and login data, frequency of logins, API calls, errors, use of certain features and functionalities, volume of Customer Content submitted or transmitted, device and browser information, geolocation data, session duration, clickstream data, user preferences and settings, error and crash reports, API usage metrics, search queries, resource utilization metrics, feature usage statistics, support and feedback interactions, and any other data or metrics derived from Customer's use of the Services.

2) CONSTRUCTION

Unless otherwise indicated to the contrary herein by the context or use thereof, for purposes of the Terms, (a) the words "include," "includes" or "including" shall be deemed to be followed by the words "without limitation," (b) the words "hereof," "herein," "hereto," "hereby" and "hereunder" and words of similar import shall refer to the Terms as a whole and not to any particular provision of the Terms, (c) the word "will" is an expression of command, not merely an expression of future intent or expectation, (d) the word "or" is not exclusive and denotes any combination of all or any of the items listed, and (e) words denoting the singular have a comparable meaning when used in the plural, and vice-versa. The descriptive headings in the Terms are inserted for convenience only and shall not control or affect the meaning or interpretation of any provision of the Terms.

3) USER ACCOUNTS, SUBSCRIPTIONS AND FREE TRIALS

1. Creating and Safeguarding your Account. To use certain features of the Services, you need to create an account ("**Account**"). You agree to provide us with accurate, complete and updated information for your Account. You can access, edit and update your Account under account settings after logging in to your Account. Your Account is personal to you and cannot be transferred to any other person or entity. You are solely responsible for any activity on your Account and for maintaining the confidentiality and security of your password. We are not liable for any acts or omissions by you in connection with your Account. You must immediately notify us at support@graphite.dev if you know or have any reason to suspect that your Account or password have been stolen, misappropriated or otherwise compromised, or in case of any actual or suspected unauthorized use of your Account. You agree not to create any Account if we have previously removed your, or we previously banned you from any of our Services, unless we provide written consent otherwise. Failure to safeguard your Account may result in suspension or termination of your Account.

2. Subscription Payment. If you buy or subscribe to any of our paid Services, you agree to pay us the applicable Fees (as defined below) and taxes in U.S. Dollars. Failure to pay these fees and taxes will result in the termination of your access to the paid Services. You agree that (a) if you purchase a recurring subscription to any of the Services, we may store and continue billing your payment method (e.g. credit card) to avoid interruption of such Services, and (b) we may calculate taxes payable by you based on the billing information that you provide us at the time of purchase. Our pricing is set out on https://graphite.dev/pricing. We reserve the right to change our subscription plans or adjust pricing for the Services in any manner and at any time as we may determine in our sole and absolute discretion. Except as otherwise provided in this Agreement, any price changes or changes to your subscription plan will take effect following reasonable notice to you. If we post new prices or make changes to the subscription plans, you will have the option to cancel your subscription if you do not agree to the new pricing. Should you choose to cancel, the cancellation will take effect at the end of the current subscription

period, and no further payments will be required. All subscriptions are payable in accordance with payment terms in effect at the time the subscription becomes payable. Payment can be made by credit card, debit card, or other means that we may make available. Subscriptions will not be processed until payment has been received in full, and any holds on your account by any other payment processor are solely your responsibility.

3. Subscription Renewals and Cancellations. You agree that if you purchase a subscription, your subscription will automatically renew at the subscription period frequency referenced on your subscription page (or if not designated, then monthly) and at the then-current rates, and your payment method will automatically be charged at the start of each new subscription period for the fees and taxes applicable to that period. To avoid future subscription charges, you must cancel your subscription before the subscription period renewal date via the Stripe billing portal or by reaching out to support@graphite.dev.

4. No Subscription Refunds. Except as expressly set forth in this Agreement or required by law, payments for Services are nonrefundable. Refunds will not be provided for partially used subscription periods. We may, at our sole discretion, provide prorated refunds in exceptional circumstances, such as prolonged service downtime caused by factors under Graphite's control. Following any cancellation by you, however, you will continue to have access to the paid Services through the end of the subscription period for which payment has already been made.

5. Free Trials. You can sign up for a trial Account for the paid portion of the Services and your trial period starts on the day you create the trial Account and lasts for the duration indicated on your free trial confirmation email (or if not specified, then 30 days). If you are on a trial, you may cancel at any time until the last day of your trial by following the cancellation procedures set forth in this Section above. If you do not cancel your trial Account at the end of your free trial period, and we have notified you that your Account will be converted to a paid subscription at the end of the free trial period, you authorize us to charge your credit card or other designated billing method for continued use of the paid Services. You may, however, then cancel your subscription in accordance with this Section above. If you cancel your trial Account or decide not to purchase a paid version of the Services at the end of your trial period, your content or data associated with your trial Account will no longer be available to you, and the Company may delete or remove any such content or data in accordance with applicable Law.

4) ACCESS AND USE

1. Provision of Access to Graphite Platform; GitHub Account. Subject to and conditioned on your payment of Fees and compliance with all other terms and conditions of this Agreement, Graphite hereby grants you a revocable, non-exclusive, non-transferable, non-sublicensable, limited right to access and use the Graphite Platform during the Term solely for your internal business operations by Authorized Users in accordance with the terms and conditions herein. You will be required to have an account with GitHub in order to access and use the Graphite Platform and to submit to your GitHub repository any code changes made using the Graphite CLI. After you create your GitHub account, you can sign up for the Services using your GitHub account and authorizing Graphite to access your GitHub account, including your public GitHub profile information, the primary email address associated with your GitHub account, profile information from the organization of which you are a part (such as organization name, description and size), and information about the GitHub repositories to which you have access. You control the scope of the authority granted to Graphite to the extent permitted by GitHub.

2. Right to Use Documentation. Subject to the terms and conditions contained in this Agreement, Graphite hereby grants you a revocable, non-exclusive, non-sublicensable, non-

transferable right for Authorized Users to use the Documentation during the Term solely for your internal business purposes in connection with use of the Services.

3. Installation of Graphite CLI. Customer acknowledges that Customer's use of the Graphite CLI requires Customer to download and install the Graphite CLI locally on Customer's device. Subject to the terms and conditions contained in this Agreement, Graphite grants you a revocable, non-exclusive, non-sublicensable, non-transferable, limited right for Authorized Users to install the Graphite CLI in accordance with the Documentation.

4. Use Restrictions. Customer and its Authorized Users shall not, and shall not permit any third party (including any third party providing services or technology to or for the benefit of Customer) to, access or use the Services, or any software component of the Services, or any Documentation for any purposes beyond the scope of the rights granted in this Agreement. Without in any way limiting the foregoing, Customer and its Authorized Users shall not, and shall not permit any third party to, directly or indirectly:

(a) copy, modify, or create derivative works based on the Services or Documentation, in whole or in part;

(b) rent, lease, lend, sell, resell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation or Customer's rights to access or use the Services, except to the extent expressly permitted under this Agreement;

(c) duplicate, decompile, reverse engineer, disassemble or decode the Services, in whole or in part (including any underlying source code, script, idea or algorithm), or attempt to do any of the same;

(d) use, reproduce, remove or obscure any copyright, trademark, service mark, trade name, slogan, logo, image, or other proprietary notation displayed on or through the Services or the Documentation (including any reports or data printed from the Services);

(e) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable Law;

(f) upload, transmit or distribute invalid data, viruses, worms, or other harmful software code, files, scripts or agents through the Services;

(g) access or use the Services in any manner that could disable, create an undue burden on, damage, disrupt or impair the Services or any servers or networks connected to the Services, or interfere with any other party's access to or use of the Services or use any device, software or routine that causes the same;

(h) attempt to gain unauthorized access to, interfere with, damage or disrupt the Services, accounts registered to other users, or the computer systems or networks connected to the Services; or

(i) bypass the measures Graphite may use to prevent or restrict access to the Services, including features that prevent or restrict use or copying of the Services or enforce limitations on access to or use of the Services.

5. Source Control Service Provider Account. As discussed above, Customer must register with GitHub before Customer can access and use the Graphite Platform and submit code changes created while using the Graphite CLI. NOTWITHSTANDING THE FOREGOING, THE GRAPHITE

ENTITIES (AS DEFINED BELOW) DISCLAIM ALL LIABILITY AND RESPONSIBILITY FOR ANY OF GITHUB'S PRODUCTS OR SERVICES (WHETHER SUPPORT, AVAILABILITY, SECURITY OR OTHERWISE) AND FOR THE ACTS OR OMISSIONS OF GITHUB OR ITS SERVICE PROVIDERS. You represent and warrant that you have all necessary rights, consents, authorizations and permissions to grant Graphite access to your GitHub account, including for the purposes described in this Agreement, without any breach by you of any of the terms and conditions that govern your GitHub account and without subjecting Graphite to any payment obligations, usage limitations or other liabilities. By granting Graphite access to your GitHub account, you understand and agree that Graphite may access, distribute, transmit, display and use any content, data, and code you provided to your GitHub account (collectively, the "**Account Content**") so it is available on and through the Services. For the avoidance of doubt, Account Content shall be deemed to be Customer Content.

6. Suspension. Notwithstanding anything to the contrary in this Agreement, Graphite reserves the right to suspend Customer's and any Authorized User's access to any portion or all of the Services: (a) if Graphite reasonably determines that: (i) there is a breach of this Agreement; (ii) Customer's or any Authorized User's use of the Services disrupts or poses a security risk to Graphite or to any other customer or vendor of Graphite; (iii) Customer or any Authorized User is using the Services for fraudulent or illegal activities; (iv) subject to applicable Law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (v) Graphite's provision of the Services to Customer or any Authorized User is prohibited by applicable Law; (b) in the event any vendor of Graphite has suspended or terminated Graphite's access to or use of any third-party services or products required to enable Customer to access or use the Services; or (c) in accordance with Section 7.4 (any such suspension described in subclause (a), (b), or (c), a "Service Suspension"). Graphite shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services, if applicable, following any material Service Suspension. Graphite will have no liability for any damage, liabilities, losses (including any loss of profits), or any other consequences that Customer may incur as a result of a Service Suspension.

5) SERVICES PLANS; BETA SERVICES; ADD-ON FEATURES

1. Service Plans. We may from time to time make the Services available through different subscription plans and/or offer multiple pricing tiers for the Services. Customer's specific plan and pricing tier for the Services will be identified in the applicable Order.

2. Beta Services. From time to time, Graphite may make Beta Services (as defined below) available to Customer. Customer may choose to use or not use such Beta Services in Customer's sole discretion. Beta Services are intended for evaluation purposes and not for production use, are not fully supported and may be subject to additional terms that may be presented to Customer. Beta Services are provided on an "as-is" and "as available" basis without any warranty, support, maintenance, or storage of any kind and may contain errors, defects, bugs, or inaccuracies that could cause failures, corruption or loss of data and information from any connected device. You acknowledge and agree that all use of any Beta Service is at your sole risk and Graphite has no liability related to your use of the Beta Services. You agree that once you use a Beta Service, your content or data may be affected such that you may be unable to revert back to a prior non-beta version of the same or similar feature. Additionally, if such reversion is possible, you may not be able to return or restore data created within the Beta Service back to the prior non-beta version. Graphite may discontinue Beta Services at any time in its sole discretion and may never make them generally available. "**Beta Services**" means a

product, service or functionality provided by Graphite that may be made available to Customer for testing at Customer's option, at reduced rates or no additional charge. Customer will be informed in advance if any payment is required. Beta Services shall be clearly designated as beta, pilot, limited release, non-production, early access, evaluation or by a similar description. Beta Services may be considered Confidential Information (as defined below) of Graphite, if so denoted or communicated by Graphite to Customer. Customer will not disclose any information about, involving or regarding Beta Services (including the existence of), except as agreed by Graphite in writing.

3. Add-On Features. Customer may choose to activate additional products, services or features that are not individually essential for the functioning of the Services, but that Graphite makes available to Customers for enhanced capabilities ("**Add-Ons**"). Add-Ons may be accessed at any time during the Term via direct Customer implementation through modules or configurations made available through the Services. Add-Ons are deemed part of the Services and governed by the terms of this Agreement, except as otherwise specified below.

> a. Pricing and Payment.
> > a. Add-Ons are available subject to the pricing set forth at https://graphite.dev/pricing;
> > b. Fees for Add-Ons are due in accordance with the payment terms set forth in this Agreement; and
> > c. Graphite reserves the right to modify the pricing and terms for Add-Ons at any time, with any such changes taking effect immediately upon posting at https://graphite.dev/pricing. Customer is responsible for reviewing any updated Add-On pricing.
> > d. If the price of an Add-On increases, Customer is not obligated to pay the new price and may choose to discontinue the Add-On without penalty. In the event of a discontinuation due to a price increase, any prepaid fees for the Add-On will be refunded on a pro-rata basis for the unused portion of the Term.
> b. Cancellation. Customers may begin or discontinue use of Add-Ons at any time through the Services interface. Prepaid fees for Add-Ons are non-refundable unless discontinuation is due to a price increase, in which case a pro-rata refund will be provided for any unused portion of the prepaid term.

6) CUSTOMER RESPONSIBILITIES

1. Acceptable Use. You agree not to use the Services for unlawful, fraudulent, tortious, harassing, intentionally misleading, offensive, or obscene activity. You will comply with all terms and conditions of this Agreement, all applicable Law, and all guidelines, standards, and requirements that may be posted on the Graphite Platform from time to time. You are responsible for obtaining and maintaining the necessary licenses, permissions, and consents required to use GitHub, and other Third-Party Services (as defined below) disclosed by Graphite as part of the Services.

2. Customer Content. You represent and warrant that you have obtained all necessary rights, consents, authorizations and permissions to provide and use the Customer Content (including all intellectual property rights therein) in connection with Customer's use of the Services and that Graphite's use thereof as contemplated by this Agreement will not infringe or violate (a) any third party intellectual property, publicity, privacy or other rights, (b) any Laws, or (c) any terms of service, privacy policies or other agreement governing your GitHub account. You agree not to provide any Customer Content in violation of any fiduciary duty, duty of confidentiality, or contractual obligation. Customer is solely responsible for any Customer Content and other

information that Customer (or any of its Authorized Users) makes available to Graphite. You are responsible for maintaining appropriate backups of your Customer Content. While we take reasonable steps to protect your data, we do not guarantee against data loss, and you agree that Graphite is not responsible for lost or corrupted data. Customer shall notify Graphite if Customer becomes aware that the Services are being used for any illegal or unauthorized purpose.

3. Use of the Services by Authorized Users. You are responsible and liable for all uses of the Services and Documentation resulting from access provided by you, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, you are responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by you will be deemed a breach of this Agreement by you. You shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services and shall cause Authorized Users to comply with such provisions.

4. Third-Party Materials. The Services may display, incorporate, permit access to or make available content, data, information, applications, systems, materials, websites and other resources of third parties ("**Third-Party Materials**"). Graphite will clearly indicate such content or features as Third-Party Materials via prominent notices or descriptions in the Services. Third-Party Materials may be made available through the list of providers included in Company's list of authorized subprocessors annexed to the Data Processing Addendum. Third-Party Materials include, without limitation, links to GitHub and GitHub integrations, the Graphite-BuildKite integration, the Graphite-Slack integration, and Stripe's payment portal. By using the Services, you acknowledge and agree that Graphite is not responsible for examining or evaluating the content, accuracy, completeness, availability, timeliness, validity, copyright compliance, legality, decency, quality, security or any other aspect of such Third-Party Materials or websites. We do not warrant or endorse and do not assume and will not have any liability or responsibility to you or any other person for any Third-Party Materials. Graphite does not warrant or endorse and does not assume and will not have any liability or responsibility to you or any other person or entity for any Third-Party Materials. Third Party Materials and links to other websites are provided solely as a convenience to you. For purposes of this Agreement, any Third-Party Materials are subject to their own terms and conditions. If you do not agree to abide by the applicable terms for any such Third-Party Materials, then you should not install, access, or use them.

7) FEES AND PAYMENT

1. Fees. In consideration of the provision of the Services to Customer, Customer shall pay Graphite the fees applicable to such access and use set forth on the applicable Order ("**Fees**"). Fees are based on the total number of Authorized Users of the Services during the applicable billing period. Customer shall not be entitled to any refund of Fees paid or relief from Fees due in the event the total number of Authorized Users during any period falls within a pricing tier for the Services that would result in payment of lower fees by Customer.

2. Payment. Payment for the Services is billed in advance as specified in the applicable Order. All Fees are payable in U.S. dollars. Payment obligations for use of the Services are non-cancelable and Fees paid are non-refundable.

3. Payment Card Authorization. Except as otherwise set forth in this Agreement or an Order, Graphite will charge the Fees and other amounts due hereunder automatically to Customer's

credit card or debit card each month. Customer hereby authorizes (a) Graphite (or its billing agent) to charge all Fees and other amounts due and owing to such credit card or debit card, including Fees with respect to renewals of subscriptions for the Services in accordance with this Agreement, on the date on which such Fees are due until Customer or Graphite terminates the Services as set forth herein, and (b) authorizes the card issuer to pay all such amounts. If payment is not received from the credit card issuer or Customer's bank, Customer agrees to pay all amounts due upon demand. Customer must provide current, complete and accurate billing and payment card information. Customer represents that it is the card holder of any credit card or debit card that it provides to Graphite for payment(s), or that Customer is duly authorized to provide the consent to use such credit card or debit card as set forth in this Section.

4. Payment Defaults. If Customer fails to make any payment when due, without limiting Graphite's other rights and remedies: (a) Graphite may charge interest on the past due amount at the rate of 1.5% per month or the maximum amount permitted by Law; (b) Customer shall reimburse Graphite for all reasonable costs incurred by Graphite in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (c) if such failure continues for 15 days or more, Graphite may suspend Customer's and all Authorized Users' access to any portion or all of the Services until such amounts are paid in full.

5. Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes, levies and duties, and Customer shall be responsible for all sales, use, and excise taxes, and any other similar taxes, levies and duties of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any United States (federal or state) taxes imposed on Graphite's income.

8) CONFIDENTIAL INFORMATION

1. Definition. From time to time during the Term, Graphite and Customer (as "**Disclosing Party**") may disclose or make available to the other party (the "**Receiving Party**") information about its and its affiliates' business affairs, products, confidential intellectual property, trade secrets, source code, financial information, third-party confidential information, and other sensitive or proprietary information, whether disclosed orally or disclosed or accessed in written, electronic, or any other form or media, that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure (collectively, "**Confidential Information**"). Notwithstanding the foregoing, the Graphite CLI and other software, applications, scripts, code, plug-ins and technology incorporated in the Services, the design and layout of the Graphite Platform user interface, all pricing information relating to the Services, and the terms and conditions of this Agreement (including all Orders) shall be deemed Confidential Information of Graphite without any marking or further designation.

2. Non-Disclosure. The Receiving Party shall maintain in confidence all Confidential Information of the Disclosing Party. The Receiving Party shall not disclose the Disclosing Party's Confidential Information to any person or entity, except to the Receiving Party's employees, agents, or subcontractors who have a legitimate need to know the Confidential Information for the Receiving Party to exercise its rights or perform its obligations hereunder and who are required to protect the Confidential Information in a manner no less stringent than required under this Agreement; provided that the Receiving Party remains responsible for compliance by any such employees, agents or subcontractors with the terms of this Section 8.

3. Exclusions. Confidential Information does not include information that is: (a) or becomes publicly known through no fault of the Receiving Party or its affiliates or their representatives; (b) already rightfully known to the Receiving Party at the time of disclosure; (c) rightfully obtained by the Receiving Party on a non-confidential basis from a third party without breach of any confidentiality obligation; or (d) independently developed by or on behalf of the Receiving Party without access to or use of any Confidential Information of the Disclosing Party.

4. Legally Required Disclosure. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information of the Disclosing Party to the limited extent required (a) to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable Law; provided that the Receiving Party first gives written notice to the Disclosing Party and makes a reasonable effort to obtain a protective order; or (b) to establish the Receiving Party's rights under this Agreement, including to make required court filings. In the event that disclosure of Confidential Information is required by law, the Receiving Party will, where legally permissible, provide the Disclosing Party with prompt written notice to allow for a protective order or other remedy. The Receiving Party agrees to disclose only the portion of Confidential Information necessary to comply with the legal requirement.

5. Survival. The confidentiality obligations in this Agreement shall continue for five years after the termination or expiration of this Agreement. However, for any Confidential Information that qualifies as a trade secret under applicable law, these obligations shall survive indefinitely for as long as such information remains a trade secret..

9) PRIVACY POLICY

You agree that Graphite shall process data on your behalf as necessary to provide you with the Services, in accordance with our Privacy Policy, and, where applicable, the Graphite Data Processing Addendum.

10) OWNERSHIP; FEEDBACK; AI FEATURES

1. Customer Content. As between you and us, you own all right, title, and interest (including all intellectual property rights) in and to Customer Content. You hereby grant to Graphite a non-exclusive, royalty-free, sublicensable, transferable, worldwide license to access, reproduce, modify, distribute, transmit, export, display, store and otherwise use the Customer Content solely as may be necessary for Graphite to provide, protect and improve the Services (including to bill you for such Services in accordance with this Agreement).

2. Graphite Proprietary Rights. As between Customer and Graphite, Graphite owns all right, title, and interest in and to (a) the Services (including the Graphite CLI and the Graphite Platform, including the design and layout of its dashboard), (b) the Usage Data, and (c) the Documentation, and all intellectual property rights therein ("**Graphite IP**"). Without in any way limiting the foregoing, "GRAPHITE," "SCREENPLAY," the Graphite logo, the Screenplay logo and any other product or service name, logo, or slogan that appear on the Services or the Documentation are trademarks of Graphite or its affiliates, and its suppliers or licensors. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any right, title or interest in, to or under the Graphite IP. Graphite reserves all rights not expressly granted to Customer in this Agreement.

3. Feedback. From time to time, you or your employees, contractors, agents or other representatives may submit or transmit suggestions, ideas, recommendations, questions, comments, or other feedback relating to the Services, including the operation thereof, or Customer's or any of its Authorized Users' use or evaluation thereof ("**Feedback**"). For the avoidance of doubt, Feedback does not include Customer Content. Graphite may use, disclose or otherwise exploit Feedback in any manner and for any purpose whatsoever without further notice or any attribution or compensation to you and without retention by you of any proprietary or other right or claim. You acknowledge and expressly agree that any contribution of Feedback does not and will not give or grant you any right, title or interest in the Services or in any such Feedback. You hereby assign, and shall cause your employees, contractors, agents and other representatives to assign, to Graphite all right, title and interest (including, but not limited to, any patent, copyright, trade secret, trademark, show-how, know-how and any and all other intellectual property right) that you or they may have in and to any and all Feedback, and you hereby waive, and shall cause your employees, contractors, agents and other representatives to waive, all moral rights to any and all Feedback.

4. AI Features; Inputs and Outputs.

    a. The Services may provide Customer with access to large language models (LLMs) and other machine learning or artificial intelligence features ("**AI Features**"). Customer may submit Customer Content to the AI Features ("**Inputs**") and receive outputs from the AI Features ("**Outputs**"). Inputs and Outputs are both considered Customer Content. At this time, Graphite may use OpenAI or Anthropic LLMs to generate Outputs. OpenAI's Business Terms are available [here](#) and Anthropic's Commercial Terms are available [here](#). OpenAI and Anthropic are additionally listed as subprocessors in Graphite's Data Processing Addendum. Other subprocessors for AI Features may be listed in Graphite's Data Processing Addendum. GRAPHITE MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE ACCURACY OF ANY OUTPUTS. YOU SHOULD NOT RELY ON ANY OUTPUTS WITHOUT INDEPENDENTLY CONFIRMING THEIR ACCURACY. OUTPUTS MAY CONTAIN MATERIAL INACCURACIES EVEN IF THEY APPEAR ACCURATE BECAUSE OF THEIR LEVEL OF DETAIL OR SPECIFICITY. THE SERVICES AND ANY OUTPUTS MAY NOT REFLECT CORRECT, CURRENT OR COMPLETE INFORMATION. ADDITIONALLY, DUE TO THE NATURE OF GENERATIVE AI MODELS, OUTPUTS MAY NOT BE UNIQUE, AND OUTPUTS THAT THE SERVICE GENERATES BASED ON MATERIALS SUBMITTED BY THIRD PARTIES ("**THIRD-PARTY OUTPUTS**") MAY BE SIMILAR OR IDENTICAL TO OUTPUTS THAT THE SERVICE GENERATE BASED ON YOUR INPUTS. YOU ACKNOWLEDGE THAT THIRD-PARTY OUTPUTS ARE NOT YOUR OUTPUTS AND THAT YOU HAVE NO RIGHT, TITLE, OR INTEREST IN OR TO ANY THIRD-PARTY OUTPUTS.

    b. Special Restrictions on Use of AI Features. Customer will not and will not permit anyone else to use the AI Features or any Output to infringe any third-party rights; use the AI Features or any Output to develop, train or improve any AI or ML models; represent any Output as being approved or vetted by Graphite; represent any Output as being an original work or a wholly human-generated work; use the AI Features for automated decision-making that has legal or similarly significant effects on individuals, unless it does so with adequate human review and in compliance with applicable laws; or use the AI Features for purposes or with effects that are discriminatory, harassing, harmful, or unethical.

    c. Customer Ownership and License. As between you and Graphite, and to the extent permitted by applicable law, Customer retains all ownership rights in Input and Customer owns all Output, and Graphite hereby assigns to Customer all of Graphite's right, title, and interest, if any, in and to Output. By using the Service, You grant Graphite a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and

distribute Customer Content, including Inputs and Outputs, for the purpose of providing, protecting, and improving the Services.

11) MODIFICATIONS TO THE SERVICES

Graphite reserves the right to modify or update the Services at any time for any reason. Where such changes materially affect the functionality of the Services, we will notify you at least 30 days in advance. If you do not agree with the changes, you may terminate your use of the Services. If no termination is requested, continued use of the Services after the effective date of the modification will constitute your acceptance of the changes.

12) DISCLAIMER

THE SERVICES (INCLUDING ANY BETA SERVICES) ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WITHOUT LIMITING THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, GRAPHITE, ITS PARENTS, RELATED COMPANIES, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, PARTNERS, LICENSORS AND SUPPLIERS (THE "**GRAPHITE ENTITIES**") EXPRESSLY DISCLAIM ALL, AND MAKE NO, WARRANTIES OF ANY KIND (WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE) WITH RESPECT TO THE SERVICES (INCLUDING ANY BETA SERVICES AND OUTPUTS), INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. THE GRAPHITE ENTITIES MAKE NO WARRANTY OF ANY KIND THAT THE SERVICES (INCLUDING ANY BETA SERVICES AND OUTPUTS), OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR OR ANY OTHER PERSON'S OR ENTITY'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OF YOUR OR ANY THIRD PARTY'S SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED. GRAPHITE IS NOT OBLIGATED TO PROVIDE CUSTOMER WITH ANY UPDATES TO THE SERVICES (INCLUDING ANY BETA SERVICES AND OUTPUTS) BUT MAY ELECT TO DO SO IN ITS SOLE DISCRETION.

13) INDEMNIFICATION

Customer shall indemnify, hold harmless, and, at Graphite's option, defend Graphite and its officers, directors, employees, agents, representatives, affiliates, successors, and assigns from and against any and all losses, damages, liabilities, deficiencies, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, arising out of or in connection with any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") (a) based on breach or non-fulfillment of any representations, warranties, obligations or other provisions of this Agreement by Customer or any of its Authorized Users (including use of the Services in violation of this Agreement and failure to have necessary rights, consents, authorizations and permissions specified in this Agreement), (b) based on Customer's or any Authorized User's negligence or willful misconduct, or (c) relating to the use or provision of any Customer Content; provided that Customer may not settle any Third-Party Claim against Graphite unless Graphite consents in writing to such settlement, and

further provided that Graphite will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

14) LIMITATIONS OF LIABILITY

EXCEPT FOR GRAPHITE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL THE AGGREGATE LIABILITY OF THE GRAPHITE ENTITIES ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO GRAPHITE UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. IN NO EVENT WILL THE GRAPHITE ENTITIES BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE, DATA OR PROFITS, BUSINESS INTERRUPTION OR ANY OTHER DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR USE OR INABILITY TO USE THE SERVICES (INCLUDING ANY BETA SERVICES AND OUTPUTS)), HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER UNDER THIS AGREEMENT OR OTHERWISE ARISING IN ANY WAY IN CONNECTION WITH THE SERVICES (INCLUDING ANY BETA SERVICES AND OUTPUTS) OR THIS AGREEMENT AND WHETHER IN CONTRACT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) EVEN IF THE GRAPHITE ENTITIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR SUCH DAMAGES OR LOSSES WERE OTHERWISE FORESEEABLE.

15) TERM AND TERMINATION

1. Term. The term of this Agreement begins on the Effective Date and continues until terminated (the "**Term**"). Unless earlier terminated in accordance with this Agreement, (a) if your Order specifies that you have purchased a Services plan with a monthly subscription period, then after the initial one-month subscription period your plan will automatically renew for additional one-month periods, or (b) if your Order specifies that you have purchased a Services plan with an annual subscription period, then after the initial one-year subscription period your plan will automatically renew for additional one-year periods, in each case, unless (i) you cancel your subscription through the settings page of your account prior to the last day of your then-current subscription period, or (ii) Graphite gives you written notice of non-renewal at least 30 days prior to the expiration of your then-current subscription period. The Fees schedule for each renewal term will be at or below Graphite's applicable list pricing in effect at the time of the renewal, unless Graphite notifies Customer of a different pricing at least 30 days before the end of the applicable subscription period. Subject to the foregoing sentence, Graphite shall be under no obligation to offer to Customer for any renewal period any discounted pricing for the Services that Graphite may have provided to Customer during any prior subscription period.

2. Termination. If you breach any of the provisions of this Agreement, all licenses granted by Graphite will terminate automatically. Additionally, Graphite may suspend, disable, or delete your Account and/or the Services (or any part of the foregoing) with or without notice, for any or no reason. If Graphite deletes your Account for any suspected breach of this Agreement by you, you are prohibited from re-registering for the Services under a different name. All sections which by their nature should survive the termination shall continue in full force and effect subsequent to and notwithstanding any termination by Graphite or you, including without limitation Sections 7-10, 11-14, 16, and 17 of the Terms. Termination will not limit any of Graphite's other rights or remedies at law or in equity.

3. Effect of Termination. Upon expiration or termination of this Agreement for any reason, (a) all rights granted to Customer shall terminate, and Customer shall immediately discontinue accessing and using the Services, and (b) Customer shall destroy all copies of the Documentation and other Confidential Information of Graphite. No expiration or termination of this Agreement will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund.

16) DISPUTE RESOLUTION

1. Informal Resolution Before filing a claim, you agree to try to resolve the dispute informally by contacting us at support@graphite.dev. **We'll try to resolve the dispute informally by contacting you via email. If a dispute is not resolved within 15 days, you or Graphite may proceed with filing a formal claim.**

2. Arbitration and Opt-Out Procedure. Any dispute arising from this Agreement will be resolved through binding arbitration, rather than in court, except that you may assert claims in small claims court if your claims qualify. You have the right to opt out of the arbitration and class action waiver provisions set forth above. To opt out, you must notify us in writing within 30 days of the date that you first became subject to this arbitration provision. Your notice must include your name, address, and a clear statement that you wish to opt out of the arbitration provision. You must send your opt-out notice to support@graphite.dev.

3. Arbitration Procedures. The arbitration will be conducted by the American Arbitration Association (AAA) under its rules for consumer-related disputes. The AAA's rules are available at or by calling 1-800-778-7879. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. Arbitration shall take place in New York, New York.

4. CLASS ACTION WAIVER. YOU AND GRAPHITE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

5. Changes. If we make any changes to this Dispute Resolution section, the changes will not apply to any disputes for which we have already received written notice.

6. Time Limitation. Any cause of action or claim you may have arising out of or relating to these Terms or the Services must be commenced within one ① year after the cause of action accrues, otherwise, such cause of action is permanently barred.

17) GENERAL TERMS

1. Remedies. Customer acknowledges and agrees that the Services have been developed at significant cost and have significant commercial value to Graphite, and that Graphite may suffer irreparable harm as a result of any breach of this Agreement for which monetary damages would not be an adequate remedy. Therefore, in addition to all other remedies available at law or otherwise (which Graphite does not waive by the exercise of any rights hereunder), Graphite may be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and Customer hereby waives any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.

2. Marketing. Customer agrees to allow Graphite to refer to Customer as a customer of Graphite and/or user of the Services, including by referring to the company or entity that employs or engages Customer (if Customer is not a company or entity). Customer hereby grants Graphite with the necessary rights and licenses to use Customer's (and if different, its company's) name and logo on the Graphite Platform and in Graphite's promotional materials to identify Customer (and if different, its company) as a customer of Graphite in accordance with Customer's brand guidelines (if applicable).

3. Modifications to this Terms. You acknowledge and agree that we have the right, in our sole discretion, to modify the Terms from time to time, and that any modified terms become effective on posting. We will notify you of substantial modifications by posting notice of the changes on the Graphite Platform or by sending you a direct email communication. You are responsible for reviewing and becoming familiar with any such modifications. Your continued use of the Services after the effective date of the modifications will be deemed acceptance of the modified terms and agreement to be bound thereby. If you do not agree to the changes, you may terminate your use of the Services.

4. Notices to Graphite. All notices and communications required or permitted under this Agreement shall be in writing. If to Graphite, notices must be provided to the address set forth below and shall be deemed to have been received (i) if given by hand, immediately upon receipt; (ii) if given by overnight courier service, the first business day following dispatch, or (iii) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail.

Legal notices:

Screenplay Studios Inc. 96 Spring Street Floor 8, New York, NY 10012

With a copy to: legal@graphite.dev

Other Notices. Any Customer notices, questions or complaints regarding the Services should be sent to the following email address: support@graphite.dev

5. Notices to Customer. Graphite may provide notice to Customer's email address on file or through the Services and such notices shall be deemed to have been received upon delivery. Without in any way limiting the foregoing, you hereby consent to receiving electronic communications from us, which may include notices about applicable fees and charges, transactional information, and other information concerning or related to the Services. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing.

6. Governing Law; Forum. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York, without regard to its conflict of Law principles. Customer and Graphite agree that the exclusive jurisdiction and venue for any action brought between the parties under this Agreement shall be the federal courts sitting in the Southern District of New York, and each Customer and Graphite hereby agrees and submits itself to the exclusive jurisdiction and venue of such courts for such purpose, to the exclusion of all other venues, forums or jurisdictions. The parties expressly disclaim the application of the United Nations Convention on the International Sale of Goods to this Agreement.

7. Assignment. Neither party may assign this Agreement, or any of its rights of obligations hereunder, without the other party's prior written consent; provided, however, that Graphite may assign this Agreement, in whole or in part, without Customer's prior written consent (i) to

one of its affiliates, or (ii) to any entity that acquires (whether by merger, reorganization, acquisition, sale or otherwise) all or substantially all of the business or assets of Graphite to which this Agreement relates. Any assignment made in violation with this Section shall be void, and this Agreement shall bind and inure to the benefit of the permitted successors and assigns of the parties.

9. Subcontracting. Notwithstanding the foregoing, Graphite may use the services of subcontractors and permit them to exercise the rights granted to Graphite in order to provide the Services under this Agreement. These subcontractors may include, for example, Graphite's hosting, infrastructure and CDN providers. Graphite remains responsible for compliance of any such subcontractor with the terms of this Agreement and the overall performance of the Services as required under this Agreement.

8. Relationship of the Parties. Graphite and Customer's relationship is solely that of independent contractors, and this Agreement will not establish any partnership, joint venture, employment, franchise or agency between Graphite and Customer. Neither Graphite nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

9. Export Regulation. The Services utilize software and technology that may be subject to U.S. export control Laws, including the U.S. Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Services or the software or technology included in the Services to, or make the Services or the software or technology included in the Services accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by Law. You shall comply with all applicable Laws and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Services or the software or technology included in the Services available outside the United States.

10. U.S. Government Restricted Rights. Each of the software components that constitute the Services and the Documentation is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212 or 48 C.F.R. §227.7202, as applicable. Accordingly, if you are an agency of the U.S. Government or any contractor therefor, you receive only those rights with respect to the Services and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government customers and their contractors.

11. Waiver. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed and will not be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. Except as expressly stated in this Agreement, no exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

12. Severability. If any provision of this Agreement is held invalid, unenforceable, or void by a court of competent jurisdiction, such provision will be enforced to the maximum extent permissible, and such holding will not affect the remaining terms. The invalid, unenforceable, or void provision will be deemed amended or replaced by a valid, legal, and enforceable provision that matches the intent of the original language as closely as possible.

13. Force Majeure. Except for payment obligations, neither party shall be liable to the other party for any delay or failure to perform any obligation under this Agreement if the delay or failure is due to circumstances beyond the affected party's reasonable control, including acts of God, fire, explosion, hurricane, flood, natural disaster, unusually severe or abnormal weather, riots or other civil disturbances, war, acts of terrorism, strikes, labor disputes, third-party Internet service interruptions or slowdowns, vandalism or "hacker" attacks, pandemics, governmental demands or requirements, shutdowns or any reasonable necessity to not operate, or to reduce any operation, in order to protect the safety of people.

14. Entire Agreement. This Agreement, together with any and all Orders, constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements and understandings between the parties relating to the subject matter hereof.

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

16. California Residents. If you are a California resident, in accordance with Cal. Civ. Code § 1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210.

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