

## TERMS OF SERVICE (for End-Users/CurtainConnect)

This is a contract between you (“User,” “you“ or “your”) and ChromaDiverse, Inc. (“ChromaDiverse,” “we,” “our“ or “us”). It describes the terms under which you may access and use the website <https://chromadiverse.org/> (the “Site”) and any associated services, content, or features provided by ChromaDiverse (collectively, the “ChromaDiverse Services”). By accessing or using the Site or any ChromaDiverse Services, you agree to these terms, which may be updated by us from time to time. These terms and conditions (collectively, the “Terms”) are so important that we cannot provide access to the Site or ChromaDiverse Services unless you agree to them. User and ChromaDiverse are sometimes each individually referred to as a “party,” and collectively as the “parties.”

**IMPORTANT NOTICE:** These Terms contain provisions that limit our liability to you and require individual arbitration of disputes rather than jury trials or class actions, as described more fully in Sections 5 and 7 below. For California residents and EU data subjects, certain arbitration provisions may not apply or may be limited under applicable law.

### 1. DEFINITIONS

1.1 “CD CurtainConnect”™ means the stand-alone product/platform that integrates with CD DigitalVault and collects personal narratives from performing arts organization Alumni. Its focus is on the history/stories of Alumni of one or more performing arts organizations, and is offered as an additional feature at no additional cost to performing arts organizations that license a CD DigitalVault. CurtainConnect helps provide a more complete view of the organization’s history by highlighting the stories of those Alumni that made the organization successful. Alumni are invited to complete an intuitive online questionnaire and submit their personal media, including photos, videos, and documents to the CD CurtainConnect site. CD Alumni’s personal collections are then combined with the organization’s historical legacy materials found in the CD DigitalVault. This integration of personal and organizational information offers a comprehensive and engaging view of the artistic contributions made to the organization’s history. Ultimately, this process strengthens the bond between the company, its Alumni, and the public by providing richer, more complete historical insights.

1.2 “CD DigitalVault”™ means the stand-alone Cloud-based application allowing a partner to store digital assets (documents, photos, video, audio, programs and sales collateral) along with associated metadata. Its focus is on digital assets that tell a performing arts organization’s story. CurtainConnect helps provide more of a 360-degree view of the history by showing the Org and those that made the Org successful.

1.3 “ChromaDiverse Services“ means the online services, content, and features provided by ChromaDiverse through the Site, including without limitation CD DigitalVault, CD CurtainConnect, public-facing content, user-uploaded materials, and any associated tools or platforms.

1.4 “User Content“ means any data, content, works, or information that you upload, post, or otherwise provide to the Site, including without limitation text, images, videos, and other media.

1.5 “Personal Data“ means any information that identifies or relates to an identifiable individual, as further described in our <https://chromadiverse.org/privacy/> and any Data Processing Agreements (“DPAs”) with third-party service providers.

1.6 “ChromaDiverse Site“ means all web pages and hosting environments managed by ChromaDiverse where Users access ChromaDiverse Services.

## **2. ACCESS AND USAGE**

2.1 Access Grant. Subject to these Terms, ChromaDiverse grants you a non-exclusive, non-transferable right to access and use the Site and ChromaDiverse Services for personal, non-commercial purposes.

2.2 Usage Restrictions. You agree not to: (a) modify, adapt, alter, or create derivative works from the ChromaDiverse Services; (b) use automated systems, such as robots or spiders, to access the Site; (c) interfere with the operation of the Site or ChromaDiverse Services; or (d) use the Site or ChromaDiverse Services for any unlawful purpose or in violation of these Terms.

2.3 User Content. By uploading or posting User Content to the Site, you grant ChromaDiverse a non-exclusive, worldwide, royalty-free license to use, display, and distribute your User Content solely for the purpose of operating and promoting the Site and ChromaDiverse Services; provided, however, that ChromaDiverse shall have the right, with your explicit consent, as indicated by your checking the box at the end of these Terms, to use for marketing and/or promotional purposes any public-facing content hosted on any of ChromaDiverse Services, including, without limitation, email marketing and advertising, social media, fundraising, webinars, blogs, white papers, and the like, as long as photographer and/or rightsholder attribution is provided in connection with such marketing and/or promotions.. You represent and warrant that you have all necessary rights to upload and share your User Content and that such content does not infringe the rights of any third party.

2.4 Security. You are responsible for maintaining the confidentiality of your login credentials and for all activities that occur under your account. You agree to notify us immediately of any unauthorized use of your account.

2.5 Service-Specific Additional Terms and Policies. These Terms apply to all ChromaDiverse Services, now or hereafter provided. Next to each service listed below, we also list additional terms and policies that apply to that particular service. These Terms, additional terms, and policies define our relationship and mutual expectations as you use these services. In the event we launch a new service, we may update these Terms, additional terms, and/or policies accordingly. The following service-specific additional terms and policies are in addition to those provisions set forth in Section 1 above, and are hereby incorporated into and made a part of this Agreement:

### **CD DigitalVault:**

1. ChromaDiverse is not responsible for management of the rights of, or use of, any of the assets uploaded to CD DigitalVault. Rather, User is solely responsible for managing the rights of, and use of, any such assets. ChromaDiverse is only providing User with technology enabling the following: (a) Managing who can get access to the assets; (b) What assets they can access; (c) What they can do with the assets; (d) Advanced and visual search capabilities to quickly find assets as necessary; and (e) The ability to share selected assets with particular individuals, groups or the public.
2. User agrees to host a copy of their public-facing portal on the ChromaDiverse Site as well as their own. This portal shall contain assets that are deemed acceptable by us, in our sole discretion, to be public facing. User warrants that it has obtained all necessary rights and consents for public display of such assets.

### **CD CurtainConnect:**

CD CurtainConnect is available to all Alumni to upload and post their content under their individual profile for public viewing. All content hosted on CD CurtainConnect shall be view-only (i.e., locked) and not downloadable by the public provided, however, that with explicit consent from the content owner obtained in accordance with applicable privacy laws, we are permitted to, and you hereby authorize us to, use any content posted by User or individual Alumni to do social media posts, advertising, webinars and support other promotional activities by us, in accordance with Section 2.4 above. All such Alumni shall be responsible for managing their content on their individual profile, in accordance with the Terms and policies set forth herein. Alumni retain ownership of their uploaded content and may request removal at any time.

### **3. ACCEPTABLE USE**

3.1 Prohibited Activities. You may not use the Site or ChromaDiverse Services to: (a) post or share content that is unlawful, defamatory, obscene, or otherwise objectionable; (b) violate the intellectual property rights of others; or (c) engage in any activity that disrupts or interferes with the Site or ChromaDiverse Services.

3.2 Compliance with Laws. You agree to comply with all applicable laws and regulations when using the Site and ChromaDiverse Services.

### **4. PROPRIETARY RIGHTS**

4.1 Ownership. The Site, ChromaDiverse Services, and all associated intellectual property rights are the exclusive property of ChromaDiverse and its licensors. You may not use any trademarks, logos, or service marks of ChromaDiverse without our prior written consent.

### **5. DISCLAIMERS, LIMITATIONS OF LIABILITY AND WAIVER OF INJUNCTIVE RELIEF**

5.1 Disclaimers. THE SITE AND CHROMADIVERSE SERVICES ARE PROVIDED AS-IS AND AS AVAILABLE WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR

IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, WHICH ARE HEREBY DISCLAIMED. CHROMADIVERSE DOES NOT GUARANTEE THAT THE SITE OR CHROMADIVERSE SERVICES WILL BE ERROR-FREE, UNINTERRUPTED, OR FREE FROM UNAUTHORIZED ACCESS. WITHOUT LIMITING THE FOREGOING, USER RECOGNIZES THAT CHROMADIVERSE DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE CHROMADIVERSE SOFTWARE AND CHROMADIVERSE SERVICES. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET AND TELECOMMUNICATIONS SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. ACCORDINGLY, CHROMADIVERSE DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

5.2 Limitations of Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, CHROMADIVERSE SHALL NOT BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO YOUR USE OF THE SITE OR CHROMADIVERSE SERVICES. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS OF LIABILITY UNDER THIS SECTION 5.2 SHALL NOT APPLY TO (A) VIOLATIONS OF APPLICABLE DATA PROTECTION LAWS, INCLUDING GDPR, CPRA AND CCPA, OR (B) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.

5.3 Waiver of Injunctive Relief. USER'S REMEDIES FOR ANY BREACH OF THIS AGREEMENT ARE LIMITED TO AN ACTION AT LAW FOR MONEY DAMAGES, IF ANY. USER SHALL NOT BE ENTITLED TO SEEK OR OBTAIN EQUITABLE RELIEF OF ANY KIND, AND UNDER NO CIRCUMSTANCES SHALL EITHER PARTY HAVE THE RIGHT TO INTERFERE WITH THE OWNERSHIP OR EXPLOITATION OF THE OTHER PARTY'S RIGHTS AS SET FORTH HEREIN; PROVIDED, HOWEVER, THAT THIS SECTION SHALL NOT APPLY TO CLAIMS FOR INJUNCTIVE RELIEF RELATED TO VIOLATIONS OF DATA PROTECTION LAWS OR CONFIDENTIALITY OBLIGATIONS WHERE SUCH RELIEF IS PERMITTED OR REQUIRED BY LAW.

## **6. TERMINATION**

6.1 Termination by You. You may stop using the Site and ChromaDiverse Services at any time.

6.2 Termination by Us. We may suspend or terminate your access to the Site or ChromaDiverse Services if you violate these Terms or engage in any prohibited activities.

6.3 Effects of Termination. Upon termination or expiration of this Agreement, any amounts owed to ChromaDiverse under this Agreement before such termination or expiration will be immediately due and payable, all access rights granted in this Agreement will immediately cease to exist, and you must promptly discontinue all use of the ChromaDiverse Services.

6.4 Data After Termination. Upon termination, ChromaDiverse will handle Personal Data in

accordance with our [Privacy Policy](#) and any DPAs, including providing you with the opportunity to retrieve or delete Personal Data as required by applicable law. The parties acknowledge that certain data retention and deletion obligations under applicable data protection laws may continue beyond termination.

## **7. GOVERNING LAW AND DISPUTE RESOLUTION**

**7.1 Governing Law; Venue.** This Agreement will be governed by, and interpreted in accordance with, the laws of the State of California applicable to contracts wholly made and to be performed therein, without reference to its choice of laws rules. Each party irrevocably submits to the sole and exclusive jurisdiction of the state and federal courts situated in the City and County of San Francisco, State of California. Each party irrevocably consents to the exercise of personal jurisdiction over each of the parties by such courts and waives, to the fullest extent permitted by law, any objection to venue and any claim of forum non conveniens. The parties expressly exclude the application of the United Nations Convention on the International Sale of Goods. Notwithstanding the foregoing, data subjects may have the right to bring claims in the courts of their habitual residence under applicable data protection laws.

**7.2 Arbitration.** Any dispute arising from, or relating to, this Agreement or any of the ChromaDiverse Services shall be resolved at the request of any party through binding arbitration in accordance with the rules of the American Arbitration Association, except for disputes relating to data protection rights under GDPR, CPRA, CCPA, or other applicable data protection laws, which may be resolved in court as provided by such laws. There shall be a panel comprised of one (1) arbitrator, to be appointed by the American Arbitration Association. At least thirty (30) days before the arbitration hearing, the parties shall allow each other reasonable written discovery, including the inspection and copying of documents and other tangible items relevant to the issues that are to be presented at the arbitration hearing. The arbitrator shall be empowered to decide any disputes regarding the scope of discovery. Fees for the arbitrator shall be divided equally between the parties, and the parties will be individually responsible for the payment of the fees. The prevailing party in any arbitration, proceeding or legal action arising out of, or in connection with, this Agreement or any of the ChromaDiverse Services shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with such arbitration, proceeding or legal action. The arbitrator shall determine who the prevailing party is for this purpose. All attorneys' fees and other expenses incurred by a party in enforcing a judgment in its favor under this Agreement shall be recoverable separate from, and in addition to, any judgment amount. This attorneys' fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment.

The award rendered by the arbitrator shall be final and binding on the parties. The arbitration shall be conducted in San Francisco County, California. The California State Superior Court located in San Francisco County, California shall have exclusive jurisdiction over disputes between the parties in connection with the arbitration and its enforcement. The parties consent to the jurisdiction and venue of the California State Superior Court located in San Francisco County, California. Notwithstanding the fact that the parties have agreed to have any disputes arising from, or related to, this Agreement resolved by binding arbitration, this arbitration provision shall not prevent the parties from seeking ancillary or equitable relief in connection

therewith from the California State Superior Court, including specific performance.

“NOTICE: BY ACCESSING THE SITE OR USING ANY OF THE CHROMADIVERSE SERVICES, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OF THE CHROMADIVERSE SERVICES DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL, EXCEPT FOR DISPUTES RELATING TO DATA PROTECTION RIGHTS UNDER APPLICABLE DATA PROTECTION LAWS. BY ACCESSING THE SITE OR USING ANY OF THE CHROMADIVERSE SERVICES, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, AND IF YOU REFUSE TO SUBMIT TO ARBITRATION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.”

7.3 Class Action Waiver. By accessing or using the Site, you waive rights to participate in class actions or representative proceedings against ChromaDiverse, except where such waiver is prohibited by applicable law, including certain data protection laws.

7.4 Remedies. The parties’ rights and remedies under this Agreement are cumulative. If any legal action is brought by either party to enforce this Agreement, the prevailing party will be entitled to receive its attorneys’ fees, court costs, and other collection expenses from the non-prevailing party, in addition to any other relief it may receive, whether or not that action is prosecuted to judgment. All such attorneys’ fees and other costs and expenses incurred by a party in enforcing a judgment in its favor under this Agreement shall be recoverable separate from, and in addition to, any judgment amount. This attorneys’ fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment.

## **8. MISCELLANEOUS**

8.1 Entire Agreement; Counterparts. This Agreement, together with our [Privacy Policy](#), constitutes the entire agreement between you and us regarding the subject hereof and supersedes any and all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may only be amended by a written document signed by both parties or by you acknowledging its acceptance of, and consent to, such amendment via click-through agreement, except that ChromaDiverse may update its [Privacy Policy](#) and any DPAs in accordance with the terms thereof.

8.2 Data Protection and International Transfers. ChromaDiverse will process Personal Data in accordance with its [Privacy Policy](#) and any DPAs. Where Personal Data is transferred outside the jurisdiction where it was collected, such transfers will be made in compliance with applicable data protection laws, including through the use of appropriate safeguards such as Standard Contractual Clauses, adequacy decisions, or other legally recognized transfer mechanisms.

8.3 Consumer Rights. If you are a consumer (as defined under applicable consumer protection

laws), certain provisions of this Agreement that limit liability or restrict rights may not apply to the extent prohibited by such laws. Nothing in this Agreement affects any statutory rights that cannot be waived or limited by contract.

8.4 Privacy and Data Collection. Our [Privacy Policy](#) describes who we are, what information we collect from you, how we process your information, who we share it with, and your rights under data protection laws. You have the right to access, correct, delete, restrict processing of, and port your Personal Data, as well as the right to object to certain processing activities, in accordance with applicable data protection laws. To exercise these rights, please contact us using the information provided below.

8.5 Changes to These Terms. We may update these Terms from time to time. Any changes will be effective upon posting to the Site, with at least thirty (30) days' prior notice to you by posting a copy thereof at <https://curtainconnect.com/terms-of-service.pdf> and sending notification to your registered email address. Your continued use of the Site after such changes constitutes your acceptance of the updated Terms.

8.6 Suspension for Non-Payment. We will provide you with notice of non-payment of any amount due. Unless the full amount has been paid, we may suspend your access to any or all of ChromaDiverse Services ten (10) days after such notice. We will not suspend the ChromaDiverse Services while you are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

8.7 Suspension for Present Harm. If your use of the ChromaDiverse Service: (i) is being subjected to denial of service attacks or other disruptive activity, (ii) is being used to engage in denial of service attacks or other disruptive activity, (iii) is creating a security vulnerability for the ChromaDiverse Services or others, (iv) is consuming excessive bandwidth, or (v) is causing harm to us or others, then we may, with electronic or telephonic notice to you, suspend all or any access to the ChromaDiverse Service. We will try to limit the suspension to the affected portion of the ChromaDiverse Services and promptly resolve the issues causing the suspension of the ChromaDiverse Service.

8.8 Waivers; Severability; Construction. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. If any provision of this Agreement or portion thereof is declared or determined by a court of competent jurisdiction to be unenforceable, such provision or portion thereof will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

Contact Information:

ChromaDiverse, Inc.  
Legal Department  
401 Harrison Street, #36F  
San Francisco, CA 94105

Email: [legal@chromadiverse.org](mailto:legal@chromadiverse.org)

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