Terms of Service

These Terms of Service are offered by **Showpad, Inc.**, a corporation duly incorporated and existing under the laws of Delaware, having its principle place of business at 301 Howard Street, Suite 1800, San Francisco, CA 94105, United States for customers located in the Americas, New Zealand and Australia, and by **Showpad NV**, a corporation duly incorporated and existing under the laws of Belgium, having its principle place of business at Moutstraat 62, 9000 Ghent, Belgium, (company registration 0836159992) for customers located in the rest of the world.

The i) Showpad Service Level Agreement, ii) the Showpad Privacy Policy, iii) the Showpad Acceptable Use Policy, and iv) the Showpad Third party Product Policy (all as then available at *https://www.showpad.com/terms-of-service*) are deemed incorporated hereunder and shall apply in full. These Terms of Service together with all documents incorporated or referenced hereunder are referred to as the "Agreement". This Agreement supersedes and replaces any prior understanding between the Parties. Consequently, any and all licenses granted before, shall become subject to the current Agreement. IF YOU DO NOT ACCEPT THE TERMS OF THE AGREEMENT IN THEIR ENTIRETY, YOU MAY NOT ACCESS OR USE THE SHOWPAD SAAS SOLUTION (INCLUDING ITS SITE, APP, CONTENT, FILES OR SERVICES).

1. PREAMBULE

1.1. The order of precedence shall be as follows:
   (i) The Agreement
   (ii) The Showpad order form ("Order Form");
   (iii) The Customer purchase order.
whereby the higher ranked document shall prevail over the lower ranked document in case of contradiction, inconsistency and/or discrepancy. No other terms and conditions shall apply, even if the same have not been expressly rejected.

1.2. **TRIAL VERSION.** Notwithstanding anything to the contrary under this Agreement, in case Customer has been granted the right by Showpad to participate in a free trial of the Licensed Product, such a free trial is granted:

i) for a term of fourteen (14) calendar days. However, Showpad always has the right, in its full discretion, to shorten or lengthen this term, and, without any motivation being required and without any compensation being due under whatever form or for whatever damages, to terminate the free trial at any moment and with immediate effect;

ii) ON AN "AS IS" and "AS AVAILABLE" BASIS WITHOUT ANY IMPLICIT OR EXPLICIT WARRANTIES OF ANY KIND (INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF AVAILABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT) AND YOU AGREE THAT SHOWPAD DISCLAIMS ANY SUCH WARRANTIES.

iii) WITHOUT ANY LIABILITIES OF SHOWPAD WHATSOEVER (DIRECT, INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES), UNDER ANY THEORY OF LAW EVEN IF SHOWPAD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN JURISIDCTIONS WHERE SHOWPAD's LIABILITY CANNOT BE EXCLUDED, SHOWPAD's LIABILITY SHALL BE LIMITED TO AN AMOUNT OF FIFTY (50,00) EURO IN THE AGREGATE (OR TO THE MAXIMUM EXTENT PERMITTED BY LAW WHERE NO FURTHER EXCLUSION IS LEGALLY ALLOWED). The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

The other terms of this Agreement will apply equally to such trial version as far as relevant.

2. LICENSE

2.1. Subject to payment of the applicable Fees as stated in the Order Form ("Fees"), and subject to ongoing compliance with the terms and restrictions as set forth under this Agreement, Showpad hereby grants Customer a personal, object code only, limited, non-exclusive, non-assignable, non-transferable license (without the right to grant sublicenses) to use the Showpad SaaS Solution as identified in the Order Form and in the format as it is being offered ("Licensed Product"), and allow usage of the Licensed Product by such users as authorized by Customer ("Users"), during the subscription term as stated in the Order Form ("Subscription Term"), for Customer's own business purposes, and for such electronic data or other electronic information, belonging to or controlled by the Customer and as submitted by the Customer or its Users for processing by the Licensed Product ("Customer Data").

2.2. All rights and Intellectual Property Rights in or to the Licensed Product (including all copies, modifications, extensions and derivative works thereof) are reserved by Showpad and Showpad's licensors, as appropriate.

2.3. Customer shall not use the Licensed Product in such a way which Showpad, acting reasonably, deems incompatible with the normal use thereof.

3. LICENSED PRODUCT

3.1. Customer confirms that the subscriptions to the Licensed Product is neither contingent upon the delivery of any future functionality or features, nor dependent upon any oral or written public comments made by Showpad with respect to (potential) future functionality or features.

3.2. Showpad reserves the right, at any time, to change the Licensed Product and its features (including occasional deprecation and removal of certain features and functionality**)**. In case of such change, Showpad will use commercially reasonable efforts to notify Customer of any such change which Showpad believes is likely to have a material, adverse impact on Customer's. In case Customer does not agree with such change, Customer must notify Showpad within thirty (30) calendar days, in which case parties shall apply the dispute resolution procedure as applicable under this Agreement. In absence of such timely notification Customer is deemed to agree with the change.

3.3. Customer understands and acknowledges that:

i) In Case Customer or its Users provide Showpad with any suggestions, User posts, comments, enhancement requests, recommendations or any other feedback (in any form) in respect to the Licensed Product ("Feedback"), Customer shall have deemed granted Showpad a royalty-free, transferable, worldwide, assignable, irrevocable, perpetual license to incorporate and/or otherwise use such Feedback in any way it sees fit (including in or relating to the (the operation of) the Licensed Product), without any right for the Customer to receive any compensation therefore. Customer understands that it is not obliged to provide for any Feedback.

ii) Customer may choose to activate or use a certain third party product or service to work with the Licensed Product, whereby the use of such third party products is subject to the Showpad Third Party Products Policy.

iii) The licensed Product may be subject to limitations, failures, delays, and/or other matters inherent to the use of the internet, electronic communications and/or Customer's or User's computing device ("Device"), and that Showpad is under no circumstance responsible or liable for any damage, loss of liabilities arising therefrom, or issues not caused by, or under the control of, Showpad;

iv) The way the Customer Data is manipulated by the User through the Licensed Product may lead to unexpected results, loss or corruption of Customer Data or other unpredictable results, damages or (un)intended exposure to third parties, and that Showpad does not bear any responsibility or liability thereto.

3.4. Usage of the Licensed Product is limited per User to a maximum of three (3) Devices.

3.5. The number of Users is limited to the number of Users as ordered. User Accounts may be reassigned by the Customer to new Users replacing former Users who no longer require ongoing use of their user Account. The number of User subscriptions purchased cannot be decreased during the relevant Subscription Term.

3.6. Unless otherwise agreed upon, additional Users subscriptions may be ordered by the Customer during the then current Subscription Term to the extent:

i) the term of the additional User subscriptions is coterminous with the expiration of the then current Subscription Term;

ii) pricing for the additional User subscriptions shall be the same as that for the pre-existing User subscriptions (excluding any one-off rebates), prorated for the remainder of the then current Subscription Term; and

iii) the terms of this Agreement apply.

3.7. The features/functionality of the Licensed Product, the level of "customer success coaching", as well as the additional options to the Licensed Product as ordered, shall be in line with the product overview as available through www.showpad.com.

4. CUSTOMER DATA

4.1. As between Showpad and Customer, all Customer Data is and shall remain the property of Customer, and Customer retains any and all rights, title and interest (including Intellectual Property Rights) in and to the Customer Data, including all copies, modifications, extensions and derivative works thereof.

4.2. Customer is solely and fully responsible (including in respect of the consequences thereof) for Its as well as its Users' compliance with the provisions of this Agreement, including strict adherence to the Acceptable Use Policy.

4.3. Apart from the explicit responsibilities of Showpad under this Agreement, Customer shall have sole responsibility and liability for the Customer Data (including but not limited to the accuracy, quality, integrity, legality, reliability, management, or relevance, of the Customer Data, or grating access thereto).

4.4. Customer acknowledges and agrees that:

i) Certain features of the Licensed Product may require access to the Customer Data in order to allow automatic processing of the Customer Data by the Licensed Product to the benefit of the Customer (e.g. to generate thumbnails or previews);

ii) Customer is responsible for ensuring that master copies of the Customer Data are stored on Customer's own systems.

iii) Showpad may itself, or allow third parties on its behalf to, scan, analyze, and/or process the Customer Data in an aggregate way in order to gather/retrieve technical data, analytical data, functional data and/or metadata, related to, or resulting from (the processing of) the Customer Data ("Functional Information") Showpad shall be entitled to use the Functional Information for any reason it sees fit. Any Functional information is and shall remain the property of Showpad, and Showpad retains any and all rights, title and interest (including Intellectual Property Rights) in and to the Functional Information , including all copies, modifications, extensions and derivative works thereof.

4.5. Notwithstanding the provisions here above, unless access to the Customer Data and/or User Accounts is explicitly granted by the Customer (e.g. through the Customer administrator's section of the Licensed Product), Showpad warrants that it, nor any of its representatives, have access to the Customer Data or the User Accounts.

5. WARRANTY

5.1. Subject to the terms of this Agreement and subject to the normal intended use of the Licensed Product by the Customer, Showpad warrants towards the Customer that the Licensed Product shall during the Subscription Term perform materially in accordance with such documentation as customarily provided, published and/or made available by Showpad with the Licensed Product.

5.2. EXCEPT TO THE EXTENT EXPRESSLY STATED UNDER THIS AGREEMENT, SHOWPAD AND ITS LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND ("AS-IS" WARRANTY), WHETHER EXPRESS, STATUTORY OR IMPLIED, REGARDING THE LICENSED PRODUCT, OR ANY MATTER WHATSOEVER UNDER OR RELATED TO THIS AGREEMENT. SHOWPAD AND ITS LICENSORS EXPRESSLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, MEETING THE CUSTOMER'S EXPECTATIONS OR REQUIREMENTS, ERROR-FREE OR UNITERRUPTED USE AND/OR NON-INFRINGEMENT.

5.3. NOTWITHSTANDING ANYTHING TO THE CONTRARY, SHOWPAD MAKES NO WARRANTY REGARDING THE QUALITY OF ANY PRODUCTS, SERVICES, OR INFORMATION/ANALYTICS, INCLUDING IN RESPECT OF THE ACCURACY, TIMELINESS, TRUTHFULNESS, COMPLETENESS OR RELIABILITY THEREOF. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM SHOWPAD OR THROUGH THE LICENSED PRODUCT, WILL CREATE ANY ADDITIONAL WARRANTIES.

5.4. Unless otherwise explicitly agreed upon, Customer's exclusive remedy for breach of warranty under this article, is that Showpad will use such commercially reasonable efforts to modify the Licensed Product to such extent that it meets the provisions of section 5.1.

6. FEES & PAYMENT

6.1. Customer shall pay the applicable Fees and in the currency as stated in the respective Order Form. Except as otherwise agreed upon, Fees are based on the number of licenses purchased, not actual usage.

6.2. Fees are payable in advance (unless otherwise specifically agreed upon), and are in all circumstances non-refundable and non-cancellable.

6.3. The per-unit pricing for the Licensed Product as applicable during the initial Subscription Term shall apply equally for any renewal thereof (with the exclusion of one-off rebates, which one-off rebates are awarded to Customer for the initial Subscription Term only), unless Showpad has given the Customer written notice of a pricing increase at least thirty (30) calendar days before the end of the then-current Subscription Term, in which case the pricing increase shall be effective upon renewal and thereafter.

6.4. Invoices are due net thirty (30) calendar days from invoice date.

6.5. Customer is responsible for maintaining complete and accurate billing and contact information, and update such appropriately.

6.6. Unpaid Fees will be increased with an interest rate equal to the one-year base rate of the European Central bank increased by 4%, with a minimum of 10% per annum (calculated to the principal sum as from the due date), as well as reasonable attorneys' fees. Repeated situations of unpaid Fees may lead Showpad to condition future subscription and/or renewals to payment terms shorter than those originally applicable. The above is without any prejudice to Showpad's rights under this Agreement or applicable law.

6.7. If Customer's account is thirty (30) calendar days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of its other rights or remedies, Showpad, without any liability whatsoever, reserves the right to suspend the access to the Licensed Product until such amounts are paid in full, provided that Showpad shall have escalated this issue to the Customer and advised Customer of its intention to suspend access prior to the suspension.

7. TAXES.

7.1. Unless otherwise stated in writing, the Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases under this Agreement.

7.2. If Showpad would have the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Showpad with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Showpad is solely responsible for taxes assessable against it based on its income, property and employees.

8. SECURITY & DATA PRIVACY

8.1. Showpad will maintain and implement throughout the Subscription Term industry standard reasonable security measures as well as business continuity and disaster recovery plans, as detailed in the SLA.

8.2. Provided that Showpad adheres to its obligations under this Agreement in respect of security, Customer's access to and, use of the Licensed Product is at Customer's own risk. Showpad will not be responsible or liable for any deletion, corruption, correction, damage, destruction or loss of Customer Data or harm to Customer's computer system that does not arise from a breach by Showpad of its obligations under this Agreement.

9. DEFECT SUPPORT

9.1. Showpad will provide defect support for the Licensed Product in accordance with the SLA, as long as Customer is entitled to receive support under the applicable Subscription Term and this Agreement.

10. INDEMNIFICATION

10.1. Showpad shall defend, indemnify and hold Customer harmless in full from and against all claims, demands, suits, or proceedings ("Claims") made or brought against Customer by a third party alleging i) a breach by Showpad of its obligations under applicable data protection laws and regulations, not caused by Customer's own acts or omissions; or ii) that the use of the Licensed Product as contemplated hereunder infringes the intellectual property rights of a third party, and pay for such amounts resulting therefrom (including reasonable attorney's fees) as awarded in a final judgement of a court of competent jurisdiction or final settlement agreement.

10.2. Customer shall defend, indemnify and hold Showpad harmless in full from and against all Claims made or brought against Showpad by a third party alleging i) a breach by Customer of its obligations under applicable data protection laws and regulations; ii) that the Customer Data infringes the intellectual property rights of, or has otherwise harmed, a third party, that iii) Customer's use of the Licensed Product in violation of this Agreement infringes the Intellectual Property Rights of, or has otherwise harmed, a third party, iv) that the Customer or one of its Users has acted in violation with this Agreement or with applicable law, and pay for such amounts resulting therefrom (including reasonable attorney's fees) as awarded in a final judgement of a court of competent jurisdiction or final settlement agreement.

10.3. The indemnification obligations under this article are subject to the indemnified party i) promptly giving written notice of the Claim to the indemnifying party, ii) giving the indemnifying party sole control of the defense and settlement of (that part of) the Claim for which the indemnifying party has an obligation to indemnify, iii) providing the indemnifying party, at its cost, all reasonable assistance in respect of the Claim, and iv) not negotiating, settling or compromising any such Claims without the prior written consent of the Indemnifying party, which consent is not unreasonably to be withheld or delayed.

10.4. If any aspect of the Licensed Product is found by a court of competent jurisdiction or in settlement or, in Showpad's reasonable opinion is likely to be found to infringe upon a third party Intellectual Property Right, Showpad shall at its expense and at its sole discretion, either i) obtain for Customer the right to continue using the Licensed Product in accordance with this Agreement, ii) modify the items in question to no longer be infringing, or iii) replace such item in question with a non-infringing functional equivalent. If, after all commercially reasonable efforts, Showpad determines in good faith that options i), ii) and iii) are not feasible, Showpad will remove the infringing item(s) from the Licensed Product and refund to Customer on a pro rata basis any Fees paid by Customer for such infringing element(s) that are unused as of the removal date.

10.5. Showpad will have no obligation or liability for any Claim to the extent arising from: i) the combination, operation or use of the Licensed Product with any product, device, software or service not supplied by Showpad or which component has been activated/used at the sole risk of Customer, ii) the unauthorized alteration or modification by Customer of the Licensed Product, iii) Showpad's compliance with Customer's designs, specifications, requests, or instructions, or iv) any other Claim resulting from causes not under the responsibility or control of Showpad, or for which Customer is obliged to indemnify Showpad.

10.6. THE FOREGOING ARE THE SHOWAD'S SOLE OBLIGATIONS IN CONNECTION WITH THIS AGREEMENT WITH RESPECT TO ITS INDEMNIFICATION OBLIGATIONS.

11. LIMITATION OF LIABILITY

11.1. EXCEPT FOR i) MATTERS FOR WHICH A PARTY HAS AN INDEMNIFICATION OBLIGATION TOWARDS THE OTHER UNDER THIS AGREEMENT, ii) MATTERS FOR WHICH BY LAW LIABILITY CANNOT BE LIMITED OF EXCLUDED, OR iii) CUSTOMER'S PAYMENT OBLIGATIONS, TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY SHALL EXCEED THE AMOUNTS PAID UNDER THIS AGREEMENT DURING A 12 MONTH PERIOD PRECEDING THE INCIDENT GIVING RISE TO LIABILITY WITH A MAXIMUM OF 25.000,00 (twenty five thousand) EURO.

11.2. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, DAMAGES DUE TO LATE DELIVERY,OR FOR ANY INDIRECT (WHICH INCLUDES BUT IS NOT LIMITED TO I) ANY FINANCIAL DAMAGES AS A RESULT OF PROPERTY DAMAGES, AND/OR II) ANY PURELY FINANCIAL DAMAGES), SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, INCLUDING LOSS OR CORRUPTION OF DATA AS WELL AS OTHER UNPREDICTABLE DAMAGE OR LOSS.

12. TERM & TERMINATION

12.1. This Agreement commences on the Effective Date and continues for the Subscription Term, and will, except otherwise indicated in the Order Form, automatically be extended by twelve (12) months' periods upon expiry of the then current Subscription Term, unless the one Party gives the other Party notice of non-renewal in writing at least thirty (30) calendar days before the expiry date of the then Current Subscription Term.

12.2. In case of breach of this Agreement, which breach remains uncured for fifteen (15) days after notification thereto, Showpad, at its discretion and without any liability whatsoever, shall have the right to either suspend the performance of its obligations until the Customer performs his obligations, or to terminate the Agreement with immediate effect.

12.3. In no event shall any termination relieve the Customer of the obligation to pay any Fees payable to Showpad for the period prior to the effective date of termination.

12.4. Customer is solely responsible for guarding, securing and retrieving the Customer Data from the Licensed Product. Showpad will not be obligated to retain any Customer Data for longer than thirty (30) days after any expiration or termination of the Agreement or Subscription Term. Showpad will make available to Customer all Customer Data in comma separated value (.csv) format along with attachments in their native format.

12.5. Any term of this Agreement which is expressed or by its nature intended to survive expiration or termination of the Agreement, including but not limited to terms governing liability of the parties, termination consequences, fees and payment for the Licensed Product, governing law and dispute resolution, confidentiality and the interpretation of this Agreement, shall survive termination of the Agreement.

13. CONFIDENTIALITY

13.1. The one party ("Receiving Party") shall not disclose or use any Confidential Information received form the other party ("the Disclosing Party") for any purpose outside the scope of this Agreement.

13.2. Confidential Information shall not encompass information that i) is or becomes generally available to the public through no act or failure to act by the receiving Party; or ii) was already in the receiving Party's possession at the time of its disclosure as shown by the receiving Party's prior written records; or iii) is subsequently disclosed to the receiving Party on a non-confidential basis by a third Party without violating any obligation of secrecy relating to the information disclosed; or iv) is independently developed by the receiving Party without making use of or relying upon the Confidential Information.

13.3. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care). This obligation shall exist while this Agreement is in force and for a period of three (3) years thereafter.

14. MARKETING

14.1. Customer agrees to allow Showpad to publicly reference Customer as a customer in accordance with this Agreement. Customer hereby grants Showpad the worldwide right to use and depict Customer's business name, trademarks and logos as a reference and/or in case studies, conform Customer's reasonable trademark guidelines (if any).

15. GENERAL

15.1. The parties to this Agreement are independent contracting parties.

15.2. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

15.3. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

15.4. Showpad may assign this Agreement in its entirety together with all rights and obligations hereunder, without consent of the Customer, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

15.5. This Agreement, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter.

15.6. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted.

16. GOVERNING LAW & DISPUTE RESOLUTION

Where Showpad Inc. is licensor: This Agreement shall be governed by and construed in accordance with California law, excluding its conflict of laws principles. Any action seeking interpretation, enforcement and/or ending of this Agreement or any provision hereof shall be brought exclusively before any of the competent courts within the State of California, County of San Francisco. Each party hereby agrees to submit to the jurisdiction of such courts.

16.1. **Where Showpad NV is the licensor: This Agreement shall be governed by and construed in accordance with Belgian law, excluding its conflict of laws principles. Any action seeking interpretation, enforcement and/or ending of this Agreement or any provision hereof shall be brought exclusively before the courts of Ghent, Belgium. Each party hereby agrees to submit to the jurisdiction of such courts.**

16.2. **Parties shall first try to settle any dispute between them amicably and in good faith negotiations, within a thirty-day period.**