

Service Terms

Welcome to iconik! The following terms and conditions (collectively with any mutually agreed addenda, this “**Agreement**”) apply to your use of iconik’s platform (collectively, the “**Platform Services**”). No other terms will apply unless expressly agreed in writing by iconik.

“**iconik**” refers to iconik Media AB, a Swedish company with Reg No. 559208-7695. You are referred to below as the “**Customer**”. You and iconik hereby agree as follows:

1. Platform Services.

1.1 Provision of Platform Services. iconik will provide the Platform Services in accordance with the terms of this Agreement.

1.2 Customer Content. iconik will maintain reasonable and appropriate administrative, technical, organizational and physical security measures to protect the content uploaded to the Platform Services by Customer (the “**Customer Content**”). As between the parties, Customer owns all right, title and interest in and to the Customer Content and iconik will use and process the Customer Content solely for purpose of providing the Platform Services to Customer. Customer will ensure that Customer has all requisite rights needed to provide the Customer Content to iconik and to use it in conjunction with the Platform Services. iconik may remove any Customer Content based on a third party demand or in the event iconik believes the Customer Content fails to meet the requirements of this Agreement. Customer acknowledges that it is solely responsible for backing-up all Customer Content and that the Platform Services are not intended to be used for file back-up.

1.3 Use of the Service. Customer will use the Platform Services only in accordance with the terms of this Agreement and the documentation provided for the Platform Services (including all instructions provided by iconik, the “**Documentation**”). Customer will ensure that Customer’s account information is accurate and complete and will be updated by Customer during the term of the Agreement as needed to maintain accuracy and completeness. Customer will give access to the Platform Services only to its employees, contractors and project participants for the purpose of working on Customer’s projects using the Platform Services (“**Authorized Users**”). Each Authorized User will register for the Platform Services individually and will not share their credentials with any other person. Customer acknowledges that apparent sharing of credentials may result in individual user accounts being denied access to the Platform Services. Customer will be able to identify each Authorized User given access to the Platform Services and will provide such information to iconik upon iconik’s request. Customer will be solely responsible for all use of the Platform Services under its account, including the acts and omissions of any Authorized Users. Customer will protect its account against any unauthorized access and will notify iconik immediately if Customer becomes aware of any unauthorized use, disclosure or other compromise of Customer’s account.

1.4 Restrictions. Customer will not engage in any activity that: (a) violates any applicable laws, rules and regulations, including all laws pertaining to the export of technology (collectively, “**Applicable Laws**”); (b) violates any contractual or other rights of any third parties; (c) violates the terms of this Agreement; or (d) disrupts the Platform Services, including vulnerability testing, circumvention of any security measure, or access or use restrictions. Specifically (and without limiting the foregoing covenants), Customer Content will not in any part violate any Applicable Laws or third party rights. In addition, Customer Content will not be in any part be pornographic, threatening, excessively violent or otherwise inappropriate as determined by iconik in its discretion. Customer will not transfer, resell, license or otherwise make the Platform Services available to third parties other than Authorized Users.

Customer will not obscure, alter or remove any markings, logos or intellectual property notices or otherwise change the appearance of the Platform Services except as expressly enabled by the Platform Services.

2. Payment.

2.1 Fees and Taxes. Customer will pay the fees further described on the iconik website located at www.iconik.io (the “Fees”). All Fees are non-refundable except as required by Applicable Law. The Fees do not include any local, state, federal, VAT or other taxes, levies or duties of any nature. Customer is responsible for paying any such taxes, excluding taxes based on iconik’s income payable by iconik without regard to the transactions contemplated by this Agreement.

2.2 Credits. Customer will be issued credits in exchange for the Fees for the Platform Services (the “Credits”). All issued Credits will expire twelve-months after the issuance date. If Customer redeems all of its Credits, Customer must purchase additional Credits in order to access and use the Platform Services, including to download any Customer Content. In the event Customer redeems all of its Credits (and does not purchase additional Credits), iconik may deactivate Customer’s account, provided iconik provides at least thirty days’ written notice to the account manager listed in Customer’s account. Customer may download the Customer Content at any time prior to deactivation, provided that Customer has purchased adequate Credits for those activities. Customer acknowledges that iconik will permanently delete the Customer Content from the Platform Services promptly after deactivation of Customer’s account.

2.3 Interest and Collection. iconik will notify Customer of any failure to pay an amount due under this Agreement as described in Section 9.3 (Notices). Commencing thirty days from the applicable due date, iconik may charge interest on any unpaid amount due to iconik at the rate of one percent per month, or at the maximum rate permitted by Applicable Law, whichever is lower, from the date such payment was due until the date it is paid. In the event iconik pursues collection of any overdue Fees payable hereunder, Customer will reimburse all reasonable third party costs and fees incurred by iconik in connection with those collection activities.

3. Confidentiality

3.1 Definitions. “**Confidential Information**” means information provided to the receiving party (“**Receiving Party**”) that is designated by the disclosing party (“**Disclosing Party**”) as “confidential” or “proprietary” or that a reasonable person would understand to be confidential given the nature of the information and the circumstances of the disclosure. “Confidential Information” does not include information that: (a) is or becomes generally known to the public through no fault of the Receiving Party; (b) is in the Receiving Party’s possession prior to receipt from the Disclosing Party; (c) is acquired by the Receiving Party from a third party without breach of a confidentiality obligation; or (d) is independently developed by Receiving Party without reference to the Disclosing Party’s Confidential Information.

3.2 Confidentiality Obligations. Receiving Party will use and disclose Confidential Information solely as contemplated by this Agreement. Receiving Party will disclose Confidential Information only on a need to know basis only to its employees, contractors or Authorized Users who are bound by obligations of confidentiality at least as strict as those contained in this Section. Receiving Party will use reasonable care to protect Disclosing Party’s Confidential Information and to prevent unauthorized disclosure of Confidential Information. Confidential Information is and will remain the exclusive property of the Disclosing Party. Subject to the terms and conditions of this Agreement, Receiving Party will, upon written request, destroy all copies of the Disclosing Party’s Confidential Information that are in its possession or control other than those copies maintained in system back-ups.

3.3 Mandated Disclosures. In the event that Receiving Party is required by Applicable Law to make any disclosure of any of the Confidential Information of Disclosing Party, Receiving Party will first give written notice of such requirement to Disclosing Party to allow Disclosing Party to protect its interests in the Confidential Information. In such cases, Receiving Party will provide full cooperation and assistance to Disclosing Party in seeking to obtain such protection, at Disclosing Party's expense.

3.4 Service Input. Notwithstanding any provision in this Agreement to the contrary, iconik may use, develop and implement any suggestions or other input concerning the Platform Services provided by Customer or any of its users (collectively, "**Input**") in connection with the development, operation, marketing and sale of the Platform Services, in its discretion and with no compensation to any person providing Input. Customer acknowledges and agrees that iconik will own all improvements, modifications and other Platform Services developed by iconik based on Input provided by Customer and its users.

4. Indemnification

Customer will defend, indemnify and hold harmless iconik, its officers, directors and employees against claim, suit or proceeding brought against iconik, its affiliates, officers, directors, employees, contractors and agents (each, a "**Claim**"), and will pay any related losses, attorneys' fees and costs as incurred, arising out of or relating to: (a) Customer's use of the Customer Content in connection with the iconik Services, (b) any breach of the provisions of Section 1 (Platform Services) by Customer and (c) any and all taxes payable by Customer pursuant to Section 2.1. iconik will provide written notice of each applicable Claim to Customer in accordance with Section 9.3 (Notices); provided that any failure to reach Customer will not limit Customer's obligations under this Section 4. Customer will not settle any Claim without the prior written consent of iconik, which consent will not be unreasonably withheld. Customer will not agree to any settlement that (a) includes any admission of wrong-doing by iconik or (b) that does not provide for a full release of all applicable claims against iconik.

5. Disclaimer

Except as expressly provided in this Agreement, the Platform Services and all related products and services are provided "AS IS," "AS AVAILABLE" and "WITH ALL FAULTS". Any promises contained in this Agreement are in lieu of all other warranties, representations or conditions, whether express or implied, including implied warranties of merchantability, fitness for a particular purpose and non-infringement, all of which are expressly disclaimed. iconik does not represent that the Platform Services will uninterrupted or error free or that the Platform Services will meet Customer's requirements. Customer is solely responsible for backing-up all Customer Content and agrees that iconik will not be liable in any way for any loss of Customer Content. Additionally, Customer acknowledges and agrees that, as a SaaS-based service, the features, functions and interfaces of the Platform Services may change over time.

6. Limitation of Liability

Under no circumstances and under no legal theory, whether in tort, contract, or otherwise, will iconik or any of its affiliates be liable for any indirect, special, incidental, consequential or punitive damages or any character, including damages for loss of goodwill, lost profits, lost sales or business, computer failure or malfunction, lost data or any and all other similar damages or losses, even if iconik (or the applicable affiliate) knew of or should have known of the possibility of such damages.

Under no circumstances and under no legal theory, whether in tort, contract or otherwise, will iconik's liability (or the liability of the applicable affiliate) under this Agreement exceed the amounts paid by Customer in the twelve month period prior to the initial liability claim.

7. Termination

7.1 Term. This Agreement will continue in effect as long as un-used Credits are in place (and have not expired pursuant to Section 2.2 (Credits) above). Upon at least thirty days prior written notice to Customer, iconik may change pricing and other terms and conditions for provision of the Platform Services.

7.2 Termination. Either party may terminate this Agreement in the event of a breach of the terms of this Agreement by the other party, which breach has not been cured within fifteen days of the provision of notice in accordance with Section 9.3 (Notices). In the event of any termination of this Agreement, iconik will discontinue Customer's access to the Platform Services and will delete Customer Content within a reasonable period. The provisions of this Section and the following Sections will survive any termination of this Agreement: Section 1.4 (Restrictions), Section 2 (Payment), Section 3 (Confidentiality), Section 4 (Indemnification), Section 5 (Disclaimer), Section 6 (Limitation of Liability) and Section 8 (Governing Law) and Section 9 (General).

7.3 Suspension of Platform Services. iconik may suspend the Platform Services in the event of any non-payment of Fees or other breach of this Agreement that is not cured within fifteen days of delivery of notice of the applicable breach to Customer in accordance with Section 9.3 (Notices). Additionally, notwithstanding any provision herein to the contrary, in the event of any activity by Customer or any of its users that has (or in iconik's reasonable assessment is likely to have) an adverse effect on the operation of the Platform Services, iconik may temporarily suspend the Platform Services with or without notice to Customer. In such event, iconik will work with Customer in good faith to remedy the cause of the adverse effect.

8. Governing Law.

8.1 For Customers located in North America: This Agreement and any disputes hereunder will be governed by the laws of the State of Delaware, United States, without regard to its conflict of law principles. Any litigation concerning this Agreement will be submitted to and resolved by a court of competent jurisdiction in Wilmington, Delaware.

8.2 For Customers located outside of North America: This Agreement and any disputes hereunder will be governed by the laws of the United Kingdom, without regard conflict of laws principles. Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, will be referred to and finally resolved by arbitration under the London Court of International Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause. The arbitration will be conducted in London, England by a single arbitrator with reasonable experience arbitrating disputes SaaS-based Platform Services offerings.

8.3 Attorneys' Fees. The prevailing party in any dispute under this Agreement will be entitled to recover all reasonable attorneys' fees and costs.

9. General

9.1 Ownership. iconik and its third party licensors will retain all ownership interest in and to the Platform Services and its underlying systems. Customer's rights under this Agreement are limited to those expressly stated in herein and no license to any intellectual property of iconik is granted except as specifically needed to access and use the Platform Services. Nothing in this Agreement is intended to limit either party's liability in the event of any misappropriation or infringement of the other party's intellectual property rights.

9.2 Marketing. Subject to any trademark usage guidelines provided by Customer, iconik may use Customer's name and logo in any Customer list promoting the Platform Services.

9.3 Notices. In the event of any breach of this Agreement (or alleged breach) by Customer, iconik may send notice of such breach by email to Customer at the email address listed in Customer's account and such notice will be deemed received on delivery to the email address. In the event of any breach of this Agreement (or alleged breach) by iconik, Customer must send its notice using a major overnight delivery service to then-current primary place of business or such other address provided by iconik.

9.4 No Assignment. Customer may not assign or delegate its obligations under this Agreement in whole or in part to any third party without iconik's written consent and any assignment without such consent will be deemed null and void.

9.5 Entire Agreement; Modification. This Agreement constitutes the entire agreement between the parties concerning the subject matter herein and supersedes any and all prior communications and agreements whether written or oral concerning the subject matter hereof. No purchase order or other text that purports to modify or supplement the printed text of this Agreement will add to or vary the terms of this Agreement. Except as expressly provided herein, any modification to this Agreement must be made in writing and signed by an authorized representative of each party.

9.6 Severability. If any provision of this Agreement is held to be unenforceable, then such provision will be reformed to the extent necessary to make it enforceable, and such holding will not impair the enforceability of the remaining provisions.

9.7 Waiver. The failure by a party to exercise any right hereunder or to enforce strict performance of any provision of this Agreement will not waive such party's right to exercise that or any other right in the future.