Akool Terms of Service Agreement  
Last Updated: April 26th, 2024

This Akool Terms of Service Agreement (this “Agreement”) governs the access and use of our website located at akool.com (the “Site”), Akool’s artificial intelligence (“AI”) powered media and image editing and generating services and the associated web-based software-as-a-service provided by Akool (“Hosted Service”), the Akool Open API and any other application programming interfaces we make available on the Site (the “APIs”), and any other Akool products and services accessible through the Site (the foregoing, collectively, the “Akool Service”), This Agreement is a legally binding contract entered into between Akool, Inc. (“Akool,” “we,” “our,” or “us”) and you (“you” or the “Customer”). Please note that Akool may modify the terms of this Agreement in accordance with Section 15.

NOTICE OF SUBSCRIPTION AUTORENEWAL: IF YOU PURCHASE A SUBSCRIPTION TO ANY PART OF THE AKOOL SERVICE, THEN YOUR SUBSCRIPTION WILL AUTOMATICALLY RENEW IN ACCORDANCE WITH SECTION 6.2 BELOW.

NOTICE OF AGREEMENT TO ARBITRATE AND WAIVER OF CLASS ACTIONS: THIS AGREEMENT CONTAINS AN AGREEMENT TO ARBITRATE WHICH WILL, WITH LIMITED EXCEPTIONS, REQUIRE YOU TO SUBMIT DISPUTES YOU HAVE AGAINST AKOOL TO BINDING AND FINAL ARBITRATION. YOU WILL ONLY BE PERMITTED TO PURSUE CLAIMS AGAINST AKOOL ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING; AND YOU WILL ONLY BE PERMITTED TO SEEK RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ON AN INDIVIDUAL BASIS. PLEASE SEE SECTION 16 FOR ADDITIONAL INFORMATION.

NOTICE OF WARRANTY & LIABILITY DISCLAIMERS: PLEASE BE ADVISED AKOOL DOES NOT PROVIDE ANY WARRANTIES TO YOU AND THIS AGREEMENT LIMITS OUR LIABILITY TO YOU AS SET FORTH IN SECTION 11.

ACCEPTANCE OF THIS AGREEMENT: BY INDICATING YOUR ACCEPTANCE TO THIS AGREEMENT OR OTHERWISE USING OR ACCESSING THE AKOOL SERVICE IN ANY MANNER: (1) YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT (INCLUDING ALL OF THE TERMS AND CONDITIONS AND POLICIES SPECIFIED OR REFERENCED BELOW); (2) YOU REPRESENT THAT YOU HAVE FULL LEGAL AUTHORITY TO ENTER INTO THIS AGREEMENT (INCLUDING ALL OF THE TERMS AND CONDITIONS SPECIFIED OR REFERENCED BELOW); AND (3) YOU REPRESENT AND WARRANT THAT YOU ARE OF A LEGAL AGE TO ENTER INTO A BINDING CONTRACT IN YOUR LEGAL JURISDICTION, OR IF YOU ARE NOT OF LEGAL AGE, YOU REPRESENT AND WARRANT THAT YOU HAVE HAD YOUR PARENT OR GUARDIAN READ THIS AGREEMENT AND AGREE TO IT ON YOUR BEHALF.

IF YOU DO NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT ACCEPT THIS AGREEMENT OR OTHERWISE ACCESS OR USE THE AKOOL SERVICE (OR ANY PART THEREOF). UPON YOUR ACCEPTANCE OF THIS AGREEMENT AS SET FORTH ABOVE, THIS AGREEMENT WILL BE BINDING UPON BOTH AKOOL AND CUSTOMER.

1. ELIGIBILITY; CUSTOMER ACCOUNTS

1.1. Eligibility. To use the Akool Service you must (a) be at least 18 years old or the applicable age of majority in your jurisdiction, or if you are under such age of majority, you must have your parent or guardian read this Agreement and agree to it on your behalf; (b) not be a person barred from using or receiving the Akool Service under the applicable laws of the United States or other countries including the country in which you are resident or from which you use the Akool Service; (c) not be a competitor of Akool or otherwise access and/or use the Akool Service (or any part thereof) for the purpose of developing competitive products or services; and (d) not have been previously removed, terminated and/or suspended from accessing and/or using the Akool Service.

1.2. Accounts. In order to use the Akool Service, Customer may be required to register an account (“Account”). In registering an Account, Customer agrees to provide and maintain up to date account registration information, which may include, your name, location, e-mail address or other contact information, and billing information (“Account Data”) that is true, accurate, current, up to date, and complete. Customer agrees that it will not, and will not permit any third party to, create an Account or sign up to access the Akool Service using a false identity or fictitious information. Customer understands and agrees that Customer is solely responsible for maintaining the confidentiality of and protecting the passwords, license keys and/or other access credentials for the Account. Customer is solely responsible for any activity originating from the Account, regardless of whether such activity is authorized by Customer. Customer agrees to notify Akool immediately of any unauthorized use of or access to Customer’s Account.

1.3. Linking a Third Party Account. You may link your Account with Third Party Accounts, by allowing Akool to access your Third Party Account, as is permitted under the applicable terms and conditions that govern your use of each Third Party Account. You represent that you are entitled to disclose your Third Party Account login information to Akool and/or grant Akool access to your Third Party Account without breach by you of any of the terms and conditions that govern
your use of the applicable Third Party Account and without obligating Akool to pay any fees or making Akool subject to any usage limitations imposed by such third party service providers. PLEASE NOTE THAT YOUR RELATIONSHIP WITH THE THIRD PARTY SERVICE PROVIDERS ASSOCIATED WITH YOUR THIRD PARTY ACCOUNTS IS GOVERNED SOLELY BY YOUR AGREEMENT(S) WITH SUCH THIRD PARTY SERVICE PROVIDERS, AND AKOOL DISCLAIMS ANY LIABILITY FOR PERSONALLY IDENTIFIABLE INFORMATION THAT MAY BE PROVIDED TO IT BY SUCH THIRD PARTY SERVICE PROVIDERS IN VIOLATION OF THE PRIVACY SETTINGS THAT YOU HAVE SET IN SUCH THIRD PARTY ACCOUNTS. "Third Party Account" means the user's valid account on a third party application or service with which Akool permits you to log in to your Account via an identity service.

1.4. Consent to Electronic Notices. Customer consents to receiving electronic communications from Akool via email, through the user-interface of the Akool Service or through Akool's authorized support communication channels, which may include notices about transactional information and other information related to Customer's use of the Akool Service. These electronic communications are part of Customer's relationship with Akool, and Customer receives them as part of Customer's access and use of the Akool Service. Customer agrees that any notices, agreements, disclosures, or other communications that Akool sends Customer electronically will satisfy any legal communication requirements, including that such communications be in writing, to the extent permitted by applicable law.

1.5. Consent to Phone Calls & Text Messaging. If you elect to receive service-related notifications, you acknowledge, agree, and expressly consent to receive service-related SMS/MMS text messages and/or phone calls from or on behalf of Akool, including, by Akool's employees, officers, directors, contractors, service providers, agents and representatives (collectively, "Akool Representatives") at the telephone number(s) you have provided to Akool in connection with your use of the Akool Service. You certify, warrant, and represent that (a) the telephone and/or mobile numbers that you have provided to Akool are numbers controlled by you and not any other person or entity, and (b) you are permitted to receive calls at each of those telephone and/or mobile numbers. You agree to immediately notify Akool in writing whenever you stop using a particular telephone number. You acknowledge and agree that communications via text messaging may make use of the data network operated by your telephone, internet, and/or wireless service provider to send both data, and that you, and not Akool, are solely responsible for any fees or charges incurred in connection with your receipt of calls and/or text messages from any Akool Representative or otherwise in connection with your use of the Akool Service, and/or any communications between you and any Akool Representative via telephone and/or text message, without limitation, any telephone and/or mobile phone provider charges for SMS, text, or data usage or services.

2. RIGHTS AND CONDITIONS TO USE AKOOL SERVICE

2.1. Access to the Akool Service. Subject to the terms and conditions of this Agreement, Akool grants to Customer a personal, non-exclusive, non-sublicensable, non-transferable limited right to access and use the Akool Service, over the internet, in accordance with this Agreement and the then-current technical and user documentation made available by Akool for the Akool Service ("Documentation"), and subject to any applicable usage parameters or restrictions specified in the Documentation or by Akool in writing regarding the scope of use of the Akool Service.

2.2. Beta Features. Akool may from time-to-time, in its sole discretion, make certain beta versions, features and/or functionality of the Akool Service (collectively, "Beta Versions") available to Customer to evaluate and try (at Customer's option) at no additional cost. For the avoidance of doubt, any Beta Versions are included in the defined term "Akool Service" as used throughout this Agreement. If Customer elects to access Beta Versions, Akool grants Customer a non-exclusive, non-transferable, non-sublicensable, limited right to access and use the Beta Version solely for Customer's internal evaluation and subject to any and all technical limitations implemented in the Beta Version and/or other usage parameters or restrictions specified by Akool. In addition to the restrictions set forth in Sections 2.3, 2.4, and 3.5 below, Customer shall not access and/or use the Beta Version without the express prior written approval of Akool if Customer is a direct competitor of Akool. In addition, Customer acknowledges and agrees that the Beta Version and any Feedback (as defined below in Section 2.6) regarding the Beta Versions are the confidential information of Akool, and Customer shall not disclose any such Feedback or other confidential information to any third party. BETA VERSION AND FEATURES ARE PROVIDED AS-IS, ARE NOT SUPPORTED, AND MAY BE SUBJECT TO ADDITIONAL TERMS AS SPECIFIED BY AKOOL IN WRITING AND/OR IN THE APPLICABLE DOCUMENTATION FOR THE BETA VERSION. Akool reserves the right to terminate Customer's access to any Beta Versions at any time, for any reason.

2.3. Prohibited Uses. Customer acknowledges that the Akool Service embodies, contains, and constitutes valuable trade secrets of Akool and its licensors and suppliers. Accordingly, Customer agrees that it will not, and it will not permit any third party to: (a) use or allow access to the Akool Service (or any part thereof) in a manner that circumvents contractual usage restrictions or that exceeds any applicable usage parameters or restrictions; (b) license, sub-license, sell, re-sell, rent, lease, transfer, distribute, time share or otherwise make any portion of the Akool Service (or any part thereof) available for access by third parties except as otherwise expressly provided in this Agreement; (c) access or use the Akool Service (or any part thereof) for the purpose of developing competitive products or services or for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purpose; (d) reverse engineer,
decompile, disassemble, copy, or otherwise attempt to derive source code or other trade secrets, or any underlying ideas, algorithms and/or technology from or about the Akool Service; (e) use the Akool Service, or any part thereof, in a way that violates or infringes upon the rights of a third party, including those pertaining to contract, intellectual property, privacy, or publicity; (f) upload, distribute or disseminate any unlawful, defamatory, pornographic, harassing, abusive, fraudulent, obscene, or otherwise objectionable content through or in connection with the use of the Akool Service (or any part thereof); (g) upload to, or otherwise provide in connection with the use of, the Akool Service, any of Your Content that contains any Sensitive Data (as defined in Section 4.5); (h) remove, alter, or obscure in any way any proprietary rights notices of Akool or its licensors and/or suppliers on or within any part of the Akool Service; (i) interfere with or disrupt the integrity or performance of the Akool Service, or any related system, network or data or cause or aid in the cause of the destruction, manipulation, removal, disabling, or impairment of any portion of the Akool Service; (j) take any action that imposes an unreasonable or disproportionately large load on the Akool Service (or any part thereof), or its underlying infrastructure and systems; (k) attempt to gain unauthorized access to the Akool Service, or its related systems or networks or attempt to disable or circumvent any security mechanisms contained, or used and/or implemented by Akool, in the Akool Service; (l) frame or utilize framing techniques to enclose the Akool Service or any portion thereof; (m) use any meta tags, “hidden text”, robots, spiders, crawlers, or other tools to collect, scrape, index, mine, republish, redistribute, transmit, sell, license, or download the Akool Service (or any part thereof), and/or the personal information of others without Akool's prior written permission or authorization; (n) use the Akool Service to store or transmit any malicious or unsolicited code or software; (o) impersonate any person or entity, use a fictitious name, or falsely state or otherwise misrepresent Customer's affiliation with any person or entity or falsely age or date of birth or any other eligibility requirements; or (p) use the Akool Service (or any part thereof), or transmit Your Content, in any manner that violates any law, rule, regulation or any other legal or regulatory requirement imposed by any regulatory or government agency, including, without limitation, export laws and regulations.

2.4. Acceptable Use Policy. We expect you to use and engage with the generative AI models we provide in a legal, responsible manner. As such, you must not use the Akool Service to (a) facilitate or perform illegal, dangerous, or malicious activities, including (i) generation of content that may harm or promote the harm of individuals or a group; (ii) attempts to circumvent or override safety filters or to intentionally drive the model to act in a manner that violates our policies; or (iii) abuse, interference, harm, or disruption of services (or enabling others to do the same); (b) generate sexually explicit or pornographic content, including content created for the purposes of sexual gratification (e.g., sexual chatbots) or pornography (note that this does not include content created for educational, scientific, documentary, or artistic purposes); or (c) generate and distribute content intended to misrepresent, mislead, or misinform, including, but not limited to, misrepresentation of the source of generated content by claiming content was created by a human, or represent generated content as original works, in order to deceive.

In addition, the avatars that are not created specifically for you and are already available in the Hosted Service (“Akool Avatars”) bear a life-like resemblance to, and are made based on, real people. For this reason, in order to protect the rights and reputation of the actors and to comply with the licensing terms with the actors, additional restrictions apply. In addition to the above general restrictions, you agree not to use any Akool Avatars without Akool's explicit written consent: (a) in Output (i) for “promoted”, “boosted”, or “paid” advertising on any social media platform or similar media; (ii) for TV broadcasting; (iii) used as or part of non-fungible tokens or similar; (iv) in which Akool Avatar is making any kind of statement of fact regarding religion, politics, race, gender, sexuality, or other similar topics that are known to be sensitive to certain demographics; or (v) in which Akool Avatar is making any kind of statement of opinion, including expressing any personal preferences or experiences as if they are Akool Avatar’s preferences or experiences; (b) to transmit, or procure the sending of, any advertising or promotional material, including any “junk mail”, “chain letter”, “spam”, or any other similar solicitation; (c) to portray Akool Avatar in Output (i) alongside in or connection with regulated or not age-appropriate goods or services; or (d) in a way that a person would reasonably find offensive, including, but not limited to portraying Akool Avatar as suffering from or medicating for any medical condition, including addiction; or (e) to create trademarks, design-marks, service-marks, or other similar protected or registrable rights.

2.5. Free Trial. If you register for a free trial to the Hosted Service, APIs, and/or any other paid features of the Akool Service on our Site, subject to the terms of this Agreement, we will make such features of the Akool Service available to you on a trial basis, free of charge, until the end of the free trial period, upon which, unless you have canceled your free trial by emailing info@akool.com at least 24 hours prior to the end of the free trial period, your paid subscription to the Akool Service (“Subscription”) shall automatically commence, provided that payment for such Subscription has been received by Akool. Additional trial terms and conditions may appear on the trial registration web page and are incorporated into this Agreement by reference. Your Content that you input into the Akool Service, and any customizations made to the Akool Service by or for you, during your free trial may be permanently lost or deleted at the end of the free trial period unless you purchase a Subscription to the Akool Service before the end of the free trial period.

2.6. Feedback. To the extent Customer provides any suggestions and feedback to Akool regarding the functioning, features, and other characteristics of any Akool Property (as defined below), or any part or component thereof,
or other materials or services provided or made available by Akool hereunder ("Feedback"), Customer hereby grants Akool a perpetual, irrevocable, non-exclusive, royalty-free, fully-paid-up, fully-transferable, worldwide license (with rights to sublicense through multiple tiers of sublicensees) under Customer’s and its licensors’ intellectual property rights to use and exploit such Feedback in any manner and for any purpose.

2.7. **Changes and Modifications.** Akool reserves the right to either temporarily or permanently modify, suspend, or discontinue the Akool Service (or any part thereof). Akool shall have no liability to Customer or any other person or entity for any modification, suspension, or discontinuation of the Akool Service.

2.8. **Additional Terms.** When using particular services, features, and/or materials through or in connection with the Akool Service, including for any contests, sweepstakes, incentive programs, or other promotional programs ("Promotions"), additional terms and conditions or other operating rules, policies and procedures may be applicable to, and govern, the use of such services, features, and/or materials, in addition to those in this Agreement (collectively, the "Additional Terms"), including without limitation the Promotions Terms for Akool Creator Fund and the additional terms for the Akool Creator Fund provided at [https://akool.com/creatorfund](https://akool.com/creatorfund). Customer agrees to comply with all such Additional Terms applicable to its use of the Akool Service. All such Additional Terms are hereby incorporated into and made a part of this Agreement by reference. In the event the provisions of any Additional Terms conflict with this Agreement, the Additional Terms shall control solely with respect to the subject matter covered by such Additional Terms.

2.9. **Akool Proprietary Rights.** Subject to your rights in and to Your Content, Akool or its licensors retain all right, title and interest in and to the Akool Service, including, all materials, graphics, user and visual interfaces, images, code (including source code or object code), products, applications, and text, embodied in, or comprising the Akool Service, as well as the design, structure, selection, coordination, expression, “look and feel” and arrangement of the Akool Service, the Usage Data, Akool Content, and the trademarks, service marks, proprietary logos and other distinctive brand features found in the Akool Service, and any and all modifications, updates, enhancements, and improvements thereto, and all intellectual property and proprietary rights, embodied in, or otherwise applicable to any of the foregoing (collectively, "Akool Property"). There are no implied rights or licenses in this Agreement and all rights and licenses not expressly granted in this Agreement are expressly reserved by Akool. “Akool Content” refers to all images, text, audio, video data, or any other information located on the Hosted Service or available through the Hosted Service except for Your Content.

2.10. **License to Akool Content.** Subject to your compliance with this Agreement, upon the generation of any Output, Akool grants you a limited, irrevocable (except for breach), non-exclusive, perpetual, worldwide, royalty-free, transferable, sublicensable license to use Akool Content solely as included in the Output. Revoking the foregoing license for the use of Akool Content in Output that is found in violation of Section 2.4 will not affect the license for any non-breaching Output. Certain parts of the Akool Content may be owned by third parties and licensed through Akool to you. Licenses granted by third parties to Akool to any Akool Content will not restrict the foregoing license.

3. **RIGHTS AND CONDITIONS TO USE THE APIS**

3.1. **Permitted Use of the APIs.** The APIs are designed to help you enhance your websites and applications ("API Client(s)"). You will only access (or attempt to access) an API by the means described in the documentation of that API. If Akool assigns you developer credentials, you must use them with the applicable APIs. You will not misrepresent or mask either your identity or your API Client's identity when using the APIs or developer accounts. Akool sets and enforces limits on your use of the APIs in Akool's sole discretion. You agree to, and will not attempt to circumvent, such limitations documented with each API, unless you obtain Akool's prior, written consent (and Akool may decline such request or condition acceptance on your agreement to additional terms and/or charges for that use). You acknowledge that your right to use the APIs is nonexclusive, and that Akool or its users may develop products or services that may compete with the API Clients or any other products or services.

3.2. **Your Obligations.** You will require your end users to comply with (and not knowingly enable them to violate) applicable law, regulation, and this Agreement. You will use commercially reasonable efforts to protect user information collected by your API Client, including personal data, from unauthorized access or use and will promptly report to your users any unauthorized access or use of such information to the extent required by applicable law. You will provide and adhere to a privacy policy for your API Client that clearly and accurately describes to users of your API Client what user information you collect and how you use and share such information (including for advertising) with Akool and third parties.

3.3. **Ownership.** Akool does not acquire ownership in your API Clients, and by using our APIs, you do not acquire ownership of any rights in our APIs or the content that is accessed through our APIs.

3.4. **Monitoring.** YOU AGREE THAT AKOOL MAY MONITOR YOUR USE OF THE APIS TO ENSURE QUALITY, IMPROVE AKOOL'S PRODUCTS AND SERVICES, AND VERIFY YOUR COMPLIANCE WITH THIS AGREEMENT. This may include Akool accessing and using your API Client, for example to identify security issues that could affect Akool or its users. You will not interfere with this monitoring, and Akool may use any technical means to overcome any such
interference. Akool may suspend your or your API Client’s access to the APIs without notice if we reasonably believe that you are in breach of this Agreement.

3.5. **API Usage Restrictions.** Without limiting Sections 2.3 or 2.4 or any other prohibitions or restrictions on your use of the Akool Service set forth in this Agreement, when using the APIs, you may not (or allow any third party to): (a) use the APIs for any activities where the use or failure of the APIs could lead to death, personal injury, or environmental damage (such as the operation of nuclear facilities, air traffic control, or life support systems); (b) use the APIs other than directly, or in connection with a service that you offer directly, to end users; (c) create an API Client that (i) functions substantially the same as the APIs and offer it for use by third parties; (ii) is directed towards or is likely to be accessed by individuals under the age of 18; or (iii) competes with any portion or all of the Akool Service without our prior written consent; (d) use the APIs in clinical practice, to provide medical advice, or in any manner that is overseen by or requires clearance or approval from a medical device regulatory agency; (e) if you are (or become) a “covered entity” or “business associate” as defined in HIPAA, use the APIs for any purpose or in any manner involving transmitting protected health information to Akool unless you have received prior written consent to such use from Akool; (f) use the APIs to obtain training data; or (g) Do the following with content returned from the APIs: (i) scrape, build databases, or otherwise create permanent copies of such content, or keep cached copies longer than permitted by the cache header; (ii) remove, obscure, or alter any copyright, trademark, or other proprietary rights notices; or falsify or delete any author attributions, legal notices, or other labels of the origin or source of material; (iii) copy, translate, modify, create a derivative work of, sell, lease, lend, convey, distribute, publicly display, or sublicense to any third party; or (iv) misrepresent the source or ownership.

3.6. **Submission of Content.** Some of our APIs allow the submission of content. Akool does not acquire any ownership of any intellectual property rights in the content that you submit to our APIs through your API Client, except as expressly provided in this Agreement. For the sole purpose of enabling Akool to provide, secure, and improve the APIs (and the related services) and only in accordance with the applicable Akool privacy policies, you grant Akool a perpetual, irrevocable, worldwide, sublicensable, royalty-free, and non-exclusive license to use, host, store, modify, communicate, and publish content submitted, posted, or displayed to or from the APIs through your API Client. Before you submit content to our APIs through your API Client, you will ensure that you have the necessary rights (including the necessary rights from your end users) to grant us the foregoing license. When a user’s non-public content is obtained through the APIs, you may not expose that content to other users or to third parties without explicit opt-in consent from that user.

3.7. **Third Party Content.** Our APIs contain some third party content (such as text, images, videos, audio, or software). This content is the sole responsibility of the person that makes it available. We may sometimes review content to determine whether it is illegal or violates our policies or this Agreement, and we may remove or refuse to display content. Finally, content accessible through our APIs may be subject to intellectual property rights, and, if so, you may not use it unless you are licensed to do so by the owner of that content or are otherwise permitted by law. Your access to the content provided by the API may be restricted, limited, or filtered in accordance with applicable law, regulation, and policy.

3.8. **Attribution.** You agree to display “Powered by Akool” in connection with your API Client(s) and any other attributions required by Akool as described in the documentation for the applicable API. Akool hereby grants you a nontransferable, nonsublicensable, nonexclusive license, during the term of this Agreement, to display the Akool Marks for the sole purpose of promoting or advertising that you use the APIs. You must only use the Akool Marks for the purpose of fulfilling your obligations under this Section and in accordance with (a) this Agreement; and (b) any branding or trademark guidelines that Akool may provide in writing from time to time. You understand and agree that Akool has the sole discretion to determine whether your attribution(s) and use of the Akool Marks are in accordance with the above requirements and guidelines. All use by you of the Akool Marks (including any goodwill associated therewith) will inure to the benefit of Akool. “Akool Marks” is defined as the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of Akool.

4. **YOUR CONTENT; DATA**

4.1. **License to Your Content.** Customer hereby grants to Akool a worldwide, royalty-free, non-exclusive license to process and use (including through the use of subcontractors) Your Content to: (a) provide Customer the Akool Service and other services provided by Akool to Customer hereunder; (b) comply with applicable law; (c) enforce our terms and policies; (d) keep the Akool Service safe; and (e) as otherwise expressly permitted in this Agreement. For the avoidance, notwithstanding the foregoing, in no event shall any of Your Content or any Usage Data (as defined below) be used by Akool or third parties to train machine learning models. Customer represents and warrants that Customer has all necessary ownership, rights, and/or authorizations to grant the licenses hereunder and to the Input. You acknowledge that any Input you provide, including any personal data you choose to include within that Input, will be shared with third party service providers in order to provide you with the Akool Service. This includes any personal data you choose to include within such Input. You consent to any such personal data included in Input being transferred to a third party service, which may not provide the same level of protection for your personal data as Akool. “Your Content” means, collectively, the Input and Output. “Input” means any input to the Hosted Service by Customer, such as text prompts describing images and videos or
other content, and any other Content that Customer transmits, processes, and/or otherwise provides (including, Account Data and Personal Data), through, or in connection with the use of, the Akool Service. "Output" means any output generated or received from the Hosted Service based on the Input.

4.2. **Ownership of Your Content.** As between the parties, subject to Akool's rights in and to Usage Data and to the extent permitted by applicable law, Customer shall retain all right, title, and interest in and to Your Content, including any Output, provided that your ownership in the Output is subject to your compliance with this Agreement. You may use the Output you generate for any lawful purpose, provided that you adhere to this Agreement and acknowledge that any use of such Output is done at your own risk. In using the Output that you generate, we kindly ask that you disclose to viewers of such Output that the content has been produced using AI technology. Customer acknowledges and agrees that Customer, not Akool, is solely responsible for any and all of Your Content submitted, transmitted, contributed, provided, generated, and/or created by Customer in connection with the use of the Akool Service.

4.3. **Storage.** Unless expressly agreed to by Akool in writing elsewhere, Akool has no obligation to store any of Your Content that you make available on the Akool Service. Akool has no responsibility or liability for the failure to store, transmit or receive transmission of Your Content; the accuracy or deletion of any of Your Content; or the security, privacy, storage, or transmission of other communications originating with or involving use of the Akool Service. You agree that Akool retains the right to create reasonable limits on Akool's use and storage of Your Content, such as limits on file size, storage space, processing capacity, and similar limits described on the Site and as otherwise determined by Akool in its sole discretion.

4.4. **Monitoring.** You acknowledge that Akool has no obligation to monitor or pre-screen Your Content, although Akool reserves the right in its sole discretion to pre-screen, refuse, or remove any of Your Content (including any Input or Output), and you hereby provide your irrevocable consent to such monitoring. You acknowledge and agree that you have no expectation of privacy concerning the transmission of Your Content. Without limiting the foregoing, (a) Akool shall have the right to remove any of Your Content that violates this Agreement or is otherwise objectionable; and (b) you acknowledge and agree that Akool may preserve your Your Content and may also disclose Your Content if required to do so by law or in Akool's good faith belief that such preservation or disclosure is reasonably necessary to: (i) comply with legal process, applicable laws or government requests; (ii) enforce this Agreement; (iii) respond to claims that Your  Content violates the rights of third parties; or (iv) protect the rights, property, or personal safety of Akool, its shareholders and licensors, Akool Representatives, and the public.

4.5. **Personal Data.** To the extent any of Your Content includes, or Customer otherwise transmits, processes, and/or provides, any personally identifiable information in connection with the use of the Akool Service ("Personal Data"), which is subject to any applicable data protection laws and/or regulations ("Applicable Data Laws"), Customer represents and warrants that: (a) such Personal Data is not sensitive data as defined pursuant to Applicable Data Laws ("Sensitive Data"), (b) Customer is in compliance with all Applicable Data Laws, and (c) Customer has obtained all permissions and/or approvals from each applicable data source as may be necessary or required to transmit such data through the Akool Service and/or provide or make available such data to Akool hereunder. Customer will provide and adhere to a privacy policy that applies to any data subjects included in Your Content and that clearly and accurately describes to such data subjects what information you collect and how you use and share such information with Akool and third parties. Account Data and Personal Data shall only be used in accordance with this Agreement and as described in Akool’s Privacy Notice available at [https://d11fbe263bhqj.cloudfront.net/public/Akool_Privacy_Policy.pdf](https://d11fbe263bhqj.cloudfront.net/public/Akool_Privacy_Policy.pdf). In addition, each party agrees to work together in good faith to mutually agree upon and enter into any documents, agreements, statements, or policies deemed necessary or appropriate by a party in its discretion to comply with any Applicable Data Laws with respect to any Personal Data exchanged pursuant to this Agreement.

4.6. **Usage Data.** Customer acknowledges and agrees that Akool has the right to (a) aggregate, collect, and analyze information, metrics, analytics, and data relating to the use of the Akool Service (collectively, "Usage Data"); (b) use such Usage Data for its internal business purposes, including, but not limited to, improving, testing, and maintaining the Akool Service, and to develop additional products and services; and (c) disclose or publish Usage Data solely in an aggregated and de-identified format that does not identify Customer or any individual. Subject to Customer’s rights in and to Your Content, Akool shall retain all right, title, and interest in and to Usage Data.

4.7. **AI Functionality.** The Akool Service utilizes certain generative artificial intelligence and other machine learning functionality ("AI Features"). Artificial intelligence and machine learning are rapidly evolving fields of study. Given the probabilistic nature of machine learning, use of the AI Features may in some situations result in incorrect Output that does not accurately reflect real people, places, or facts or conform to your specifications. You are responsible for evaluating the accuracy of any Output as appropriate for your use case, including by using human review of the Output. While Akool takes measures to preclude your creation of inappropriate content, Akool cannot guarantee the appropriateness of the resulting Output you generate. You are solely responsible for your use of the Hosted Service, including your generation of Output, your Input, and the consequences of your posting, publishing, or sharing of any Output. Due to the nature of the
Hosted Service and AI generally, Output may not be unique and other users may receive similar Output from the Hosted Service. Please note that we may utilize AI Features developed by third parties. You agree to use the AI Features in accordance with this Agreement and the then-current terms and conditions and other policies governing the use of the applicable of any third party AI Features.

4.8. Security. Akool shall implement and maintain industry-standard technical and organizational security measures that are reasonably designed to prevent unauthorized access to and disclosure of unencrypted Your Content. Without prejudice to Akool's foregoing obligations, Customer is responsible for its secure use of the Akool Service, including: (a) protecting account authentication credentials; (b) implementing measures to allow Customer to backup and archive appropriately in order to restore availability and access to Your Content in a timely manner in the event of a physical or technical incident; and (c) taking any appropriate steps to securely encrypt or pseudonymize any of Your Content.

5. Third Party Products and Services. The Akool Service may contain links to, or otherwise allow Customer to connect to and/or use certain third party products, data, services, websites, applications, software, scripts and/or APIs (collectively “Third Party Services”). Third Party Services are not owned, controlled, or operated by Akool and are subject to separate terms and conditions of the applicable third party provider. If Customer decides to access and use any Third Party Services, such use is governed solely by the terms and conditions for such Third Party Services. Akool does not endorse, is not responsible for, and makes no representations as to such Third Party Services, their content, or the manner in which they handle, secure, protect or use Customer's data. Akool is not liable for any damage or loss caused or alleged to be caused by or in connection with Customer's access or use of any such Third Party Services, or Customer's reliance on the privacy practices or other policies of such Third Party Services. Akool does not warrant, endorse, guarantee, or assume responsibility for any Third Party Services, and Akool will not be a party to, or in any way monitor, any transaction between Customer and the third party providers of such Third Party Services.

6. Payment.

6.1. Fees. In order to access and use the APIs, Hosted Service, and/or any other paid feature of the Akool Service, Akool may require you to pay fees in exchange for credits for such usage. Any such credits purchased for a given Subscription period shall not roll over into the subsequent Subscription period and must be used within the Subscription period for which they were purchased. Akool's pricing webpage sets forth Akool's current fees and payment, renewal, and Subscription terms and is located at https://akool.com/setting/billing. Akool reserves the right to determine pricing for the Akool Service. Akool will make reasonable efforts to keep pricing information published on our pricing webpage up to date. We may increase or add new fees for any existing Akool Service or feature by giving you advance notice of changes before they apply.

6.2. Subscription and Auto-renewals. Akool may allow you to purchase a Subscription to certain portions or features of the Akool Service for which you will be periodically billed the amounts indicated to you at the time of your subscription to the applicable Subscription plan, as may be updated from time to time by Akool, on a forward-going basis, upon notice to you and your acceptance thereof. When you purchase a Subscription, the Subscription will be billed on a periodic basis. You hereby authorize Akool to charge your credit card, debit card, or bank account (as applicable) on a going-forward basis and until cancellation of either the Subscription or your Account. The “Subscription Billing Date” is the day of the month when you sign up for your Subscription plan. Your account will be charged automatically on the Subscription Billing Date for all applicable fees and taxes for the next subscription period.

By purchasing a Subscription, you agree that after the initial term of your Subscription plan, and again after any subsequent Subscription period, provided that Akool receives payment of the applicable Subscription fees, your Subscription will automatically renew on the first day following the end of such period for successive periods of the same duration at Akool's then-current price for such Subscription plan unless you cancel your Subscription plan or account as further described below.

You may cancel your Subscription plan at any time by emailing info@akool.com, in which case your Subscription plan will expire at the end of that Subscription period (and upon which expiration your Subscription will no longer be renewed or charged). You must cancel your Subscription plan at least 24 hours before it renews in order to avoid billing of the next periodic Subscription fee to your account.

6.3. Free Credits. We may in our sole discretion provide complimentary credits to you that enable free use of the APIs, Hosted Service, and/or any other paid feature of the Akool Service. You agree that you have no title or interest in these complementary credits, which are not legal tender, and which Akool may revoke at any time. If you create more than one Account or otherwise attempt to fraudulently obtain complementary credits, we reserve the right to charge you the purchase price for the Akool Service you obtain using such credits or revoke your access to the Akool Service.
6.4. Third Party Payment Provider. Akool uses third party payment providers (each, a “Third Party Payment Provider”) such as Stripe, Inc. and its affiliates as the third party service provider for payment services (e.g., card acceptance, merchant settlement, and related services). By making any purchase on the Akool Service, you agree to be bound by the terms and policies of the applicable Third Party Payment Provider(s), including Stripe’s Privacy Policy (currently accessible at https://stripe.com/us/privacy) and its Terms of Service (currently accessible at https://stripe.com/us/terms), and hereby consent and authorize Akool and Stripe to share any information and payment instructions you provide with one or more Third Party Payment Providers to the minimum extent required to complete your transactions.

6.5. Taxes. The payments required under Section 6.1 of this Agreement do not include any Sales Tax that may be due in connection with the services provided under this Agreement. If Akool determines it has a legal obligation to collect Sales Tax from you in connection with this Agreement, Akool shall collect such Sales Tax in addition to the payments required under Section 6.1. If any services, or payments for any services, under the Agreement are subject to any Sales Tax in any jurisdiction and you have not remitted the applicable Sales Tax to Akool, you will be responsible for the payment of such Sales Tax and any related penalties or interest to the relevant tax authority, and you will indemnify Akool for any liability or expense Akool may incur in connection with such Sales Tax. Upon Akool's request, you will provide Akool with official receipts issued by the appropriate taxing authority, or other such evidence that you have paid all applicable taxes. For purposes of this Section, "Sales Tax" shall mean any sales or use tax and any other tax measured by sales proceeds that is the functional equivalent of a sales tax where the applicable taxing jurisdiction does not otherwise impose a sales or use tax.

6.6. Withholding Taxes. You agree to make all payments of fees to Akool free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments of fees to Akool will be your sole responsibility, and you will provide Akool with official receipts issued by the appropriate taxing authority, or such other evidence as we may reasonably request, to show that such taxes have been paid.

6.7. Fee Disputes. Should you have any dispute as to fees associated with your Account, please contact us at info@akool.com within 30 days of the date of the activity that generated such dispute, and we will attempt to resolve the matter. Any and all refunds issued to resolve such a dispute shall be issued as credits to your Account, but in no event shall there be any cash refunds. Disputes older than 90 days shall not be entitled to any refunds or credits.

7. TERMINATION

7.1. Term and Termination. This Agreement is effective as of the date of your acceptance and shall continue until terminated in accordance with the terms herein, and (a) Customer may terminate this Agreement and its Account, at any time, by submitting its request to Akool by contacting us at: info@akool.com; and (b) if Akool, in good faith, believes that Customer has used the Akool Service (or any part thereof) in violation of this Agreement, Akool may, in its discretion, (i) suspend or terminate Customer’s right to access or use the Akool Service (or any part thereof), with or without notice, and/or (ii) terminate this Agreement with respect to Customer immediately upon written notice.

7.2. Effect of Termination. Upon termination of this Agreement or of your use of the Akool Service for any reason, (a) your right to access and use the Akool Service will automatically terminate, and you will cease all access and use of the Akool Service and related Documentation; (b) you will immediately cease all use of the Akool Marks (if applicable); (c) you will delete any cached or stored content that was permitted by the cache header under Section 3; (d) Akool may independently communicate with any account owner whose account(s) are associated with your API Client and developer credentials to provide notice of the termination of your right to use an API; and (e) Akool may, but is not obligated to, delete any of Your Content. Akool shall not be responsible for the failure to delete or deletion of Your Content. In addition, if Akool terminates this Agreement or your use of any part of the Akool Service because it has found you in breach of this Agreement or violation of applicable use policies, you must cease use of and delete any Output and any other materials obtained from the Akool Service in your possession, whether in electronic or printed format. Except as expressly set forth herein or on Akool’s pricing webpage, Akool will not under any circumstances issue a refund for early termination of this Agreement or of your use of the Akool Service. Any provision that by its nature or express terms should survive will survive the termination or expiration of this Agreement, including Sections 2.3, 2.4, 2.6, 2.9, 2.10, 3.3, 3.5, 4.2, 4.4, 4.6, 4.7, 6 (solely with respect to any accrued and unpaid fees), 7.2, 8, 9, 10, 11, 12, 14, 15, 16, and 18.

8. CONFIDENTIALITY. Each party (the “Disclosing Party”) may from time to time during the term of this Agreement disclose to the other party (the “Receiving Party”) certain proprietary and non-public information regarding the Disclosing Party’s products, services, and business (collectively, “Confidential Information”). Without limiting the foregoing, Confidential Information shall include: (a) with respect to Akool: the Documentation, Feedback, and any non-public aspects of, and/or non-public technical and business information regarding, the Akool Service (or any part thereof); (b) with respect to Customer: Your Content; and (c) all materials and information disclosed under this Agreement that are marked “confidential” by the Disclosing Party or that the Receiving Party knows or should have known, under the circumstances or by its nature, are considered confidential by Customer. The Receiving Party agrees that it will (i) not disclose to any third party or cause to be disclosed any of the Disclosing Party’s Confidential Information unless authorized in writing by the
of the Akool Service or any Output thereof; (e) your use of the Akool Service or any Output thereof; and (f) your end user’s violation of this Agreement; or (iii) any content or data routed into or used with the APIs by you, those acting on your behalf, or your end users.

Customer of its obligations under this Section unless it is materially prejudiced by such delay); (b) give Customer sole control of the defense thereof; and (c) at Customer’s reasonable request and expense, cooperate and assist in such defense.

Under no circumstances shall Customer enter into any settlement that involves an admission of liability, negligence, or other culpability of Akool or requires Akool to contribute to the settlement without Akool’s prior written consent. Akool may participate and retain its own counsel at its own expense.

10. DISCLAIMERS. THE AKOOL SERVICE, AI FEATURES, AKOOL CONTENT, AND ANY OTHER MATERIALS AND/OR SERVICES PROVIDED BY AKOOL HEREUNDER ARE PROVIDED ON AN “AS IS” BASIS, WITH ANY AND ALL FAULTS, AND WITHOUT ANY WARRANTY OF ANY KIND. AKOOL EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF THIRD PARTY RIGHTS. AKOOL DOES NOT WARRANT OR MAKE ANY GUARANTEE THAT DEFECTS WILL BE CORRECTED OR THAT THE AKOOL SERVICE (OR ANY PART THEREOF), AKOOL CONTENT, ANY OUTPUT, OR ANY OTHER MATERIALS OR SERVICES PROVIDED BY AKOOL: (A) WILL MEET CUSTOMER’S REQUIREMENTS; (B) WILL BE COMPATIBLE WITH CUSTOMER’S NETWORK, COMPUTER, OR ANY THIRD PARTY SERVICES; (C) WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE BASIS; OR (D) WILL BE ACCURATE OR RELIABLE. AKOOL DOES NOT MAKE ANY COMMITMENTS ABOUT THE CONTENT ACCESSED THROUGH THE APIS OR THE SPECIFIC FUNCTIONS OF THE APIS. YOU ACKNOWLEDGE AND AGREE THAT AKOOL IS NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD AKOOL LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OPERATORS OF EXTERNAL SITES, AND THAT THE RISK OF INJURY FROM SUCH THIRD PARTIES LIES ENTIRELY WITH YOU. YOU ACCEPT AND AGREE THAT ANY USE OF OUTPUT FROM THE HOSTED SERVICE IS AT YOUR SOLE RISK, AND YOU WILL NOT RELY ON OUTPUT TO (i) BE APPROPRIATE FOR YOUR USE CASE; (ii) ACCURATELY REFLECT REAL PEOPLE, PLACES, OR FACTS; OR (iii) CONFORM TO YOUR SPECIFICATIONS. AKOOL MAKES NO WARRANTY OF ANY KIND THAT OUTPUT CREATED BY USERS WITH ASSISTANCE OF THE HOSTED SERVICE WILL BE ELIGIBLE FOR COPYRIGHT PROTECTION. AKOOL EXPRESSLY DISCLAIMS
ANY LIABILITY ARISING FROM YOUR USE OF ANY OUTPUT, INCLUDING FOR ANY COMMERCIAL PURPOSE. IN NO CIRCUMSTANCES MAY AKOOL BE CONSIDERED AS A "PUBLISHER" OF ANY INPUT, AND AKOOL DOES NOT IN ANY WAY ENDORSE ANY INPUT OR OUTPUT. DO NOT USE OR RELY ON THE AKOOL SERVICE FOR MEDICAL, LEGAL, FINANCIAL, OR OTHER PROFESSIONAL ADVISORY PURPOSES. ANY CONTENT REGARDING THOSE TOPICS IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR ADVICE FROM A QUALIFIED PROFESSIONAL AND DOES NOT CONSTITUTE MEDICAL TREATMENT OR DIAGNOSIS. YOU ACKNOWLEDGE THAT SOME JURISDICTIONS PROVIDE LEGAL PROTECTION AGAINST A PERSON’S IMAGE, LIKENESS, PROPERTY, OR WORKS OF ART BEING USED FOR COMMERCIAL PURPOSES WHEN THEY HAVE NOT PROVIDED A RELEASE. IN SUCH CASES, YOU SHALL BE SOLELY RESPONSIBLE FOR DETERMINING WHETHER A RELEASE IS REQUIRED IN CONNECTION WITH ANY PROPOSED USE OF THE OUTPUT, AND SHALL BE RESPONSIBLE FOR OBTAINING SUCH RELEASE. AKOOL DOES NOT GRANT ANY RIGHT NOR MAKE ANY WARRANTY WITH REGARD TO THE USE OF NAMES, PEOPLE, TRADEMARKS, TRADE DRESS, LOGOS, REGISTERED DESIGNS OR WORKS OF ART, OR ARCHITECTURE DEPICTED IN ANY OUTPUT. THE FOREGOING DISCLAIMERS ARE MADE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

11. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR AKOOL’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL AKOOL BE LIABLE TO YOU, WHETHER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY AND EVEN IF AKOOL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITY: (i) IN THE AGGREGATE, FOR ANY AMOUNTS GREATER THAN THE FEES PAID OR PAYABLE BY CUSTOMER TO AKOOL FOR THE AKOOL SERVICE GIVING RISE TO THE LIABILITY DURING THE 12 MONTH PERIOD IMMEDIATELY PRIOR TO THE CAUSE OF ACTION, OR, WITH RESPECT TO ANY FREE, TRIAL, PROMOTIONAL, OR BETA VERSION, $100.00; (ii) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES OR RIGHTS; (iii) FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, RELIANCE, OR CONSEQUENTIAL DAMAGES; (iv) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA; (v) FOR YOUR USE OF OR THE INABILITY TO USE THE AKOOL SERVICE OR ANY RELATED INFORMATION; (vi) FOR ANY UNAUTHORIZED ACCESS TO OR ALTERATION OF ANY OF YOUR CONTENT; (vii) FOR THE CONDUCT OF ANY THIRD PARTY; (viii) FOR ANY LOSS, DELETION, OR DAMAGE TO ANY OF YOUR CONTENT OR ANY LOSS, DAMAGE, COST, OR EXPENSE THAT YOU OR OTHERS MAY SUFFER OR INCUR AS A RESULT OF OR IN CONNECTION WITH PUBLISHING, ACCESSING, AND/OR RELYING ON ANY OF YOUR CONTENT; OR (ix) FOR ANY OTHER MATTER RELATING TO THE AKOOL SERVICE. THE PARTIES AGREE THAT THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THIS AGREEMENT OR ANY LIMITED REMEDY SPECIFIED HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. THE PARTIES AGREE THAT THIS SECTION 11 REPRESENTS A REASONABLE ALLOCATION OF RISK AND THAT AKOOL WOULD NOT PROCEED IN THE ABSENCE OF SUCH ALLOCATION. THIS ALLOCATION OF RISK IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. AKOOL DISCLAIMS ALL LIABILITY OF ANY KIND WITH RESPECT TO AKOOL’S LICENSORS AND SUPPLIERS. THE WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY INURE TO THE BENEFIT OF AKOOL’S LICENSORS, SUPPLIERS, PARENTS, SUBSIDIARIES, AND OTHER AFFILIATED COMPANIES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND OTHER REPRESENTATIVES.

12. JURISDICTIONAL ISSUES. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES WITH RESPECT TO CONSUMERS, IN SUCH STATES OR JURISDICTIONS, THE DISCLAIMERS, EXCLUSIONS AND LIMITATIONS SET FORTH IN SECTIONS 10 AND 11 SHALL APPLY TO A CONSUMER ONLY TO THE EXTENT SUCH LIMITATIONS OR EXCLUSIONS AND REMEDIES ARE PERMITTED UNDER THE LAWS OF THE JURISDICTION WHERE SUCH CONSUMER IS LOCATED.

13. AVAILABILITY OF THE SERVICE. Information describing the Akool Service is accessible worldwide, but this does not mean is, or certain portions thereof, and/or Akool Property, are or will be available in Customer’s country. Akool may restrict access to the Akool Service, or portions thereof, and/or any Akool Property, in certain countries in its sole discretion. It is Customer’s responsibility to make sure the use of the Akool Service is legal in Customer’s country of residence.

14. GOVERNMENT RIGHTS. The Akool Service provided under this Agreement is a commercial computer software program developed solely at private expense. As defined in U.S. Federal Acquisition Regulations (FAR) section 2.101 and U.S. Defense Federal Acquisition Regulations (DFAR) sections 252.227-7014(a)(1) and 252.227-7014(a)(5) (or otherwise as applicable to Customer), any software underlying the Akool Service is deemed to be “commercial items” and “commercial computer software” and “commercial computer software documentation.” Consistent with FAR section 12.212 and DFAR section 227.7202, (or such other similar applicable provisions), any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or documentation by the U.S. government (or any agency or contractor thereof) shall be governed solely by the terms of this Agreement.

15. MODIFICATIONS TO THIS AGREEMENT. Akool reserves the right to update or modify this Agreement at any time. The revised Agreement will be posted at https://d11fbe263bhqij.cloudfront.net/public/Akool-Terms-of-Service.pdf. Except as stated below with respect to material changes, all updates and modifications to this Agreement will be effective from the day they are posted, as indicated by the “Last Updated” date set forth above. If Akool makes any material changes to this Agreement, Akool will post a prominent notice on Akool’s website and/or through the user interface of the Akool Service.
Material changes to this Agreement will become effective on the date set forth in the notice. It is Customer's responsibility to regularly visit and review this Agreement for updates and modifications. If Customer does not agree to any updates or modifications to this Agreement, Customer must terminate its Account as set forth in Section 7.1 above and cease all use and access of the Akool Service. Customer's continued access or use of the Akool Service (or any part thereof) after the effective date of the revised Agreement will constitute Customer's acceptance of the revised Agreement.

16. GOVERNING LAW AND DISPUTE RESOLUTION

16.1. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with, the laws of the State of California, without reference to its choice of law. The UN Convention on Contracts for the International Sale of Goods is expressly excluded from this Agreement. This Agreement (including without limitation, the Akool Service and any services provided hereunder) will not be governed or interpreted in any way by referring to any law based on the Uniform Computer Information Transactions Act (UCITA), or any other act derived from or related to UCITA.

16.2. Disputes. You agree that any dispute between you and Akool arising out of or relating to this Agreement, the Akool Service (or any part thereof), Akool Content, and/or any content, materials, and/or services provided by Akool hereunder (collectively, “Disputes”) shall be governed by the provisions set forth in this Section 16.

16.3. Notice of Disputes. A party who intends to seek arbitration or bring other action permitted under this Section 16 with respect to any Dispute, must first send a written notice of the Dispute to the other party by certified U.S. Mail or by overnight courier such as Federal Express (signature required) or, only if that other party has not provided a current physical address, then by electronic mail (“Dispute Notice”). Akool’s address for Dispute Notices is: 880 W Maude Ave, Sunnyvale, CA 94085, United States. The Dispute Notice must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought.

16.4. Informal Resolution. You and Akool agree to use good faith efforts to resolve the Dispute directly, but if an agreement to do so is not reached within 30 days’ receipt of the Dispute Notice, you or Akool may commence an arbitration proceeding or other permitted action, as set forth in this Section.

16.5. Agreement to Arbitrate. In the interest of resolving Disputes between you and Akool in the most expedient and cost-effective manner, and except as described in Section 16.9, you and Akool agree every dispute arising in connection with this Agreement will be resolved by binding individual (not class) arbitration (the "Agreement to Arbitrate"). Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This Agreement to Arbitrate includes all claims arising out of or relating to any aspect of this Agreement, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of this Agreement. THIS AGREEMENT TO ARBITRATE MEANS YOU AND AKOOL WAIVE YOUR/ITS RESPECTIVE RIGHTS TO A JURY TRIAL. THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED. THIS AGREEMENT TO ARBITRATE AND THE ARBITRATION PROVISIONS SET FORTH IN THIS SECTION 16 ARE GOVERNED BY THE FEDERAL ARBITRATION ACT.

16.6. Arbitration. Any arbitration between you and Akool will be settled under the Federal Arbitration Act and administered by the American Arbitration Association ("AAA") under its Consumer Arbitration Rules or its Commercial Arbitration Rules in effect at time the claim is submitted (the "Rules") as modified by this Section 16.6. You and we agree the following rules will apply to the proceedings: (a) the arbitration will be heard and determined by a single, neutral arbitrator selected in accordance with the Rules; (b) the arbitration will take place in the county where you live or at another mutually agreed location; (c) the arbitration will be conducted by telephone, online, or based solely on written submissions (at the choice of the party seeking relief); (d) the arbitration must not involve any personal appearance by the parties or witnesses (unless we and you agree otherwise), and provided that, Disputes that involve a claim of more than $10,000 USD must be resolved per the Rules about whether the arbitration hearing has to be in-person; and (e) any judgment on the arbitrator's rendered award may be entered in any court with competent jurisdiction. All arbitration proceedings between the parties will be confidential unless otherwise agreed by the parties in writing. Except as otherwise expressly set forth in this Agreement, the arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement. The arbitrator shall have the authority to grant all relief that a court of competent jurisdiction could order, including awards of attorney's fees and costs. Regardless of the way the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. A party electing arbitration must initiate proceedings by filing an arbitration demand with the AAA. The Rules and filing forms are available online at www.adr.org, by calling the AAA at 1-800-778-7789.

16.7. Fees. You are responsible for paying your portion of the fees set forth in the AAA fee schedule, and Akool will be responsible for the remainder of the arbitrator’s and arbitration service fees. If you believe you cannot afford the AAA fees, you may apply to AAA for a fee waiver. You are responsible for any other fees you may incur, including attorneys’ fees.
If the arbitrator finds that either the substance of your claim or the relief sought in the demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the Rules. In that case, you agree to reimburse Akool for all monies previously disbursed by it that are otherwise your obligation to pay under the Rules.

16.8. **Opting-Out of Arbitration.** If you do not wish to resolve disputes by binding arbitration, you may opt out of this Agreement to Arbitrate within 30 days after the date that you first agree to this Agreement by sending a letter to Akool, Inc., Attention: Arbitration Opt-Out, 880 W Maude Ave, Sunnyvale, CA 94085, United States, that specifies: your full legal name, the email address used to register an Akool Account (if applicable), and a statement that you wish to opt out of arbitration ("Opt-Out Notice"). Once Akool receives your Opt-Out Notice, this Agreement to Arbitrate will be void and the parties agree that the exclusive jurisdiction and venue described in Section 16.10 will govern any action arising out of or related to this Agreement. The remaining provisions of this Section 16 will not be affected by your Opt-Out Notice.

16.9. **Exception to Arbitration.** Despite this Agreement to Arbitrate, nothing in this Agreement will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; or (c) seek equitable relief in a court of competent jurisdiction either (i) in aid of arbitration; (ii) to stop unauthorized use of the Akool Service or infringement of intellectual property rights; or (iii) as set forth in Section 18.1. In addition, any Disputes concerning either party's intellectual property rights or claims of piracy or unauthorized use of the Akool Service shall not be subject to arbitration but instead must be heard in state or federal courts in Santa Clara County, California.

16.10. **Enforceability; Venue.** If this Agreement to Arbitrate is found not to apply to your or our claim, you and Akool agree that any judicial proceeding will be brought in the federal or state courts located in Santa Clara County, California. Both you and Akool consent to venue and personal jurisdiction there.

16.11. **No Class Actions.** YOU MAY ONLY RESOLVE DISPUTES WITH AKOOL ON AN INDIVIDUAL BASIS, AND MAY NOT BRING A CLAIM AS A PLAINTIFF OR A CLASS MEMBER IN A CLASS, CONSOLIDATED, OR REPRESENTATIVE ACTION. CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATED ARBITRATIONS ARE NOT ALLOWED UNDER THIS AGREEMENT.

16.12. **Time Limitation to Bring Claims.** Notwithstanding any statute or law to the contrary, you expressly acknowledge and agree that any claim or cause of action arising out of or related to your use of the Akool Service (or any part thereof) or this Agreement must be filed within one (1) year after such claim or cause of action arose, otherwise that claim or cause of action will be barred forever.

17. **COPYRIGHT COMPLAINTS.** If you believe that your intellectual property rights have been infringed, please send notice to the address below. We may delete or disable content that we believe violates this Agreement or is alleged to be infringing and will terminate accounts of repeat infringers where appropriate.

AKOOL Inc
880 W Maude Ave, Sunnyvale, CA 94085, United States
+1 650-686-5661
info@akool.com

Written claims concerning copyright infringement must include the following information: (i) a physical or electronic signature of the person authorized to act on behalf of the owner of the copyright interest; (ii) a description of the copyrighted work that you claim has been infringed upon; (iii) a description of where the allegedly infringing material is located on our site so we can find it; (iv) your address, telephone number, and e-mail address; (v) a statement by you that you have a good-faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and (vi) a statement by you that the above information in your notice is accurate and, under penalty of perjury, that you are the copyright owner or authorized to act on the copyright owner's behalf.

18. **GENERAL**

18.1. **Equitable Relief.** Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 8 (Confidentiality) or, in the case of Customer, Sections 2.3 (Prohibited Uses), 2.4 (Acceptable Use Policy), or 3.5 (API Usage Restrictions), would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief and any other relief that may be available from any court of competent jurisdiction, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law.

18.2. **Severability; Waiver.** If any provision of this Agreement is held to be invalid or unenforceable for any reason by a court of competent jurisdiction, the remaining provisions will continue in full force without being impaired or invalidated in any way. The failure of either party to insist upon strict performance of any provision of this Agreement, or to exercise
any right provided for herein, will not be deemed to be a waiver of the future enforcement of such provision or right, and no waiver of any provision or right will affect the right of the waiving party to enforce any other provision or right herein.

18.3. Notices. All notices permitted or required to be sent to Akool under this Agreement shall be in writing and sent by personal delivery, email (where permitted), or by certified or registered mail, return receipt requested, and shall be deemed delivered (a) upon personal delivery, (b) with respect to certified or registered mail, the later to occur of receipt or refusal of delivery, or five (5) business days after being deposited in the mail as required above, and (c) upon confirmation of transmission if sent by email. Notices shall be sent to Akool via email to info@akool.com. Except as otherwise set forth herein, all notices to Customer hereunder shall be sent via email to Customer’s email address specified in the Account.

18.4. Assignment. Customer may not assign its rights or obligations under this Agreement without Akool’s prior written consent. Any attempted assignment or transfer of this Agreement by Customer in contravention of the foregoing shall be null and void. Akool may freely assign or transfer this Agreement (including any of its rights or obligations under this Agreement) and may delegate the performance of any services hereunder to its affiliates, employees, contractors, and subcontractors, without Customer’s consent. Without limiting the foregoing, Akool may disclose personal information to third parties it chooses to acquire or with buyers, successors, or others in connection with a merger, divestiture, restructuring, reorganization, financing due diligence, initial public offering, dissolution, or other sale or transfer of some or all of our assets or transition of service to another provider, whether as a going concern or as part of bankruptcy, receivership, liquidation or similar proceeding, as permitted by law and/or contract. This Agreement shall be binding on the parties and their respective successors and permitted assigns.

18.5. Independent Contractors; Third Party Rights. The parties hereto are independent contractors, and no agency, partnership, joint venture, or other relationship is intended or created by your access to or use of the Services. This Agreement is not intended to grant rights to anyone except Customer and Akool, and in no event shall this Agreement create any third party beneficiary rights, nor be interpreted or construed to confer any rights or remedies on or to any third parties.

18.6. Publicity. You will not make any statement regarding the Output or your use of an API which suggests partnership with, sponsorship by, or endorsement by Akool without Akool’s prior written approval. You agree that Akool may identify you as a user of the Akool Service and use your name and/or logo in sales presentations, on the Akool website, and in marketing materials and press releases.

18.7. Force Majeure. Akool shall not be deemed liable for any failure to perform any obligation in relation to the Akool Service or under this Agreement which is due to an event beyond our control, including but not limited to any act of God, terrorism, war, political insurgency, insurrection, pandemic, riot, civil unrest, the act of civil or military authority, uprising, earthquake, flood, or any other natural or man-made event outside of our control.

18.8. Export Control. You may not use, export, import, or transfer the Akool Service except as authorized by U.S. law, the laws of the jurisdiction in which you obtained the Akool Service, and any other applicable laws. In particular, but without limitation, the Akool Service may not be exported or re-exported (a) into any United States embargoed countries, or (b) to anyone on the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Department of Commerce’s Denied Person’s List or Entity List. By using the Akool Service, you represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country, and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. You also will not use the Akool Service for any purpose prohibited by U.S. law. You acknowledge and agree that products, services, or technology provided by Akool are subject to export control laws and regulations of the United States, and you shall comply with these laws and regulations.

18.9. Entire Agreement; Construction. This Agreement, together with any Additional Terms, and any other policies or terms and condition referenced herein, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous representations, understandings, agreements, communications, or purchase orders between the parties, whether written or oral, relating to the subject matter hereof. Section headings are provided solely for reference purposes and in no way define, limit, interpret, or describe the scope or extent of such section or in any way affect this Agreement. When used in this Agreement, the term “including without limitation,” unless expressly stated to the contrary.

19. QUESTIONS. Please feel free to contact Akool at info@akool.com if you have any questions about this Agreement.