

VAGON

Last Updated: 15.04.2021

Thank you for choosing Vagon Inc's services. This Terms and Conditions ("Agreement") is signed between Vagon, Inc., a Company incorporated under the laws of Delaware, USA ("Company", "Vagon", or "Us") and users ("User/s", "You" or "Your").

This Agreement shall be effective (i) when You start using the services of Vagon or (ii) when You sign in from www.vagon.io or access Applications. Please read all herein articles and provisions carefully. When You accept the terms of this Agreement or start using our services, you agree, declare and undertake (i) that you have read and understood the articles of this Agreement, (ii) that you fully understand, and be bound by the all provisions. In the event that the work and transactions specified in this Agreement are restricted, prohibited or otherwise regulated under your local law, You are solely liable to your local authorities for benefiting from our services.

The Company shall not be liable for your actions which may classify as unlawful under your local law.

1. DEFINITIONS

Service/s: Cloud-based computer usage and server space allocation through online system via Applications.

Applications: Vagon.io and all access platforms (desktop and mobile applications)

Services Fee: The Services Fee contains the Workstation monthly subscription fee and all the additional fees charged by the Company such as licensing fee, extra computer storage fee or any usage fee est.



Force Majeure: Any incident that caused being deemed to include but not restricted to acts of God, Fires, Explosion, Natural Disaster, Floods, Epidemics, Strikes, Lockouts, Labor Trouble, Injunctions, Wars or Riots, Compliance with Laws, Regulations, Order or actions or restrictions caused by the Server Provider.

Service Package/s: Service options presented by the Company to the Users. These are formed by User's preferences for Workstation storage options.

Windows Operating System: Software for using the computer or other digital gadgets developed and owned by the Microsoft Corporation.

User Content: All of the content including but not limited to visual and auditory content, coding and data created or provided by the User that kept inside the Workstation.

Workstation: The virtual space provided to the User by Vagon. This virtual space will be provided within the Server Provider infrastructure.

Stripe: A payment service provider company, titled as "Stripe, Inc."

Server Provider: Cloud storage provider companies.

Intellectual Property Rights: All worldwide Intellectual Property Rights, including copyrights, trademarks, service marks, trade secrets, patents, patent applications, and moral rights, whether registered or unregistered.

2. SERVICES

2.1. Subject to the terms this Agreement, Company will use commercially reasonable efforts to provide User the Services during the Term of this Agreement. User and any End Users may access and use the Services in accordance with this Agreement and published Policies, then in effect.

2.2. Subject to the terms hereof, Company will provide User with reasonable technical support services.

2.3. Company may update, change, discontinue, or deprecate the Services, or change or remove features or functionality of the Services from time to time. If Company changes the Services in a manner that adversely reduces the functionality of the Services, Company will inform User via the email address associated with the account.

2.4. Company reserves the right to offer features or functionalities that Company is still testing and evaluating. These features or functionalities will be identified as “Beta Services.” Notwithstanding anything to the contrary in this Agreement, the following terms apply to all Beta Services: (a) you may use or decline to use any Beta Services at your own discretion; (b) Beta Services may not be supported and may be changed at any time without notice to you; (c) Beta Services may not be as reliable or available as Services; and (d) Company will have no liability arising from our in connection with the use of Beta Services.

You may not use the Company Services if you are a person barred from receiving the Company Services under the laws of the United States or other countries, including the country in which you are a resident or from which you use the Company Services. You affirm that you are over the age of 13, as the Company Services are not intended for children under 13.

3. REPRESENTATION AND WARRANTY

With agreeing on the terms and provisions of this Agreement, Users represent and warrant the Company that User is lawfully able to enter into an agreement and use the services. If a User is signing this Agreement on behalf of an entity, the individual accepting this Agreement represents and warrants to the Company that User has the authority to bind the entity to this Agreement and agrees on the entity’s behalf to be bound by this Agreement.

4. REGISTRATION

4.1. For using the Services, You need to register to the Applications with your e-mail address and password. After the registration, You will have access to your dashboard. For using the Services, You may need to give additional personal information regarding the billing of the Service Fee and security of the Applications. For details of the requested personal information please read our [Privacy Policy](#) carefully.

4.2. Users agree and accept that all personal information that has been provided is correct and it will be updated in case of any change of this information. Users are solely responsible for protecting their accounts with strong passwords and keep the security of their accounts.

5. HOW THE SYSTEM WORKS

5.1. After registration, You will have the option to choose the Service Package for Workstation presented by the Company. After choosing Your preferred Service Package, the Company will allocate a Workstation to You. This Workstation will be accessed and used through the interface provided by the Company. The interface to access the Workstation will operate through the Windows Operating System unless (i) otherwise requested by the User and (ii) approved by the Company.

5.2. You will be able to use the Workstation through the interface in accordance with the law and this Agreement. Your access speed to Workstation may vary depending on your location, server density, and Force Majeure events. The Company does not guarantee the speed and continuousness of access to Your Workstation.

6. THIRD-PARTY RIGHTS

6.1. Unless otherwise specified under this Agreement, Users shall be solely responsible for their use, installation, or transfer of the software or content which belong to third parties, within the Workstation defined in the Services. Vagon may provide installation services for some third-party applications and tools for reasons including but not limited to facilitating the onboarding process. Users shall undertake, accept and declare that their use does not infringe upon any third-party's rights and they further agree that they will remove any content that constitutes an infringement. Vagon is not a party of any dispute which shall arise from the User's infringement of this provision.

6.2. The Service or third parties may provide, applications, resources, and links to other accessible sites. Since Vagon has no control over such sites, applications, and resources, Users are acknowledged, and they agree that Vagon is not responsible for the availability of such external sites, applications or resources, and does not endorse and is not responsible or liable for any content, advertising, products or other materials on or available from such sites or resources. Users further agree that Vagon, directly or indirectly, shall not be responsible or liable for any damage or loss caused, or alleged to be caused by, or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.

6.3. Vagon uses the storages provided by the Server Providers and renders its Services through these storage. In this context, any third-party's, including Server Providers, content or service, shall not be included and accounted as the Services provided by Vagon. For the avoidance of doubt, Services do not include any third-party services or contents.

6.4. You represent and warrant that User Content does not and will not violate any third-party rights, including, without limitation, any Intellectual Property Rights. If User becomes aware that any Content violates any provision of this Agreement, User agrees to remove the applicable part of User Content from the Services. You are solely responsible for maintaining licenses and adhering to the license terms of any software you run related to your use of the Services.

7. LICENCING & OWNERSHIP

7.1. Vagon does not have any ownership rights to User Content produced by Users and Users will be deemed to be the sole owner of their content. However, it should be noted that Vagon has the right to access and share User Content as required by Article 8, Security of the Services.

7.2. Other than the User Content, any content visual design, graphics, information, data, coding, product software and any data provided or produced by and subject to the rights of Vagon shall be under the ownership of Vagon. The access right provided by Vagon, under the Services, to the Users grants the User a limited, revocable, non-exclusive, non-sublicensable, non-transferrable right to use and does not grant any right to claim ownership, etc., on any content owned by Vagon.

7.3. The license rights for the Windows Operating System and other operating systems used within the interface in which the Services are provided are not owned by the Vagon and they belong to third parties. Any damages, unauthorized access, or unfair use by Users to these operating systems will constitute a breach of this Agreement. Vagon reserves the right of recourse to the relevant User for any legal or penal sanctions to be made by third-party licensors holding the license rights of the operating systems used to provide the service.

7.4. The license rights for all third-party applications and software installed to Workstations either via Vagon's services or by Users belong to third parties and Users are

solely responsible to comply with their related service and licensing terms. Any damages, unauthorized access, or unfair use by Users to the third party applications will constitute a breach of this Agreement. Vagon reserves the right of recourse to the relevant User for any legal or penal sanctions to be made by third-party licensors holding the license rights.

7.5. Vagon ensures the Users a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to download and use Applications strictly to access and use the Services solely in accordance with this Agreement. Within this scope, Users obtain no additional rights regarding Vagon apps (in general over the Applications), including any related Intellectual Property Rights.

8. SECURITY OF THE SERVICES

8.1. Vagon will take technical and organizational security measures to keep Users Data safe. Security measures are aimed for (i) the protection of the User Data, against any unauthorized access and (ii) to keep the Services work properly. However, in addition, the User shall take the necessary measures to ensure the ultimate security of their Workstations and User Contents. In this context, the User accepts (i) that Vagon cannot be responsible for all security breaches and (ii) that the User is responsible for all errors and their direct or indirect consequences that may occur in his / her software and operating systems upon using Vagon's Services.

8.2. Vagon reserves the right to access the Users Data in the following cases. In these cases, Users will be notified of any access by Vagon.

- a. Required by (i) the law to be applied to the Agreement or (ii) the User is subject to or (iii) requested by a court order.
- b. To comply with the decision of a State body which the User or the Company is obliged to comply with,
- c. Violation of the Agreement which will damage Vagon.

8.3. Users shall take necessary measures to protect User Content and protect their Workstation against unauthorized access. Users shall notify the Vagon immediately, in case of unauthorized access to their Workstation or sufficiently suspected on a breach of the security and privacy of Users Content.

9. USAGE LIMITATIONS & PROHIBITIONS

9.1. Users are prohibited to use the Service or keep User Content in their Workstation (i) for any illegal purpose or (ii) to violate any local, state, national or international law. Users are prohibited to violate or encourage others to violate, any right of a third party or Vagon itself, including by infringing or misappropriating any third-party's intellectual property rights and interfere with security-related features of the Service, including by disabling or circumventing features that prevent or limit access to the Services or reverse engineering or otherwise attempting to discover the source code of any portion of the Applications except to the extent that the activity is expressly permitted by applicable law.

9.2. Accessing the Applications or the Services by the illegal methods and uploading or otherwise disseminating any virus, adware, spyware, worm, or other malicious code, attempting to collect personal information about another user or third party without consent, interfering with or disrupting any network, equipment, or server connected to or used to provide, perform any fraudulent activity including impersonating any person or entity, claiming a false affiliation, or accessing any other User's account without permission are strictly prohibited.

10. SERVICE FEE & PAYMENT

10.1. Users shall pay the monthly subscription fee depending on their preferred Service Package. Workstation usage time will be charged additionally in minutes depending on the performance type User chooses multiplied by related performance-price per minute. Usage time may be charged any time or together with the User's monthly subscription fee for the Workstation, at Vagon's own discretion on this matter. Apart from the usage time, if Users require additional disk space for the Workstation, additional disk space's fee will be added to the subscription fee, on a monthly basis. Vagon may also charge the first additional storage fee together with usage time fee or other charges at Vagon's own discretion on this matter. Vagon may also charge outbound internet traffic costs in increments. Once the defined outbound internet traffic limit included in the Service Package is exceeded, User's account balance will be charged for further defined outbound internet traffic for the User. Vagon may also provide a deposit method through which the User deposits a certain amount to the User's Vagon account first and all usage

and service charges can be deducted from the User's balance. Users can deposit more funds to their balance anytime. If the User's balance doesn't have adequate funds, the User's payment method can be charged for all service charges when necessary. Excessive balance amounts are transferrable to the following months.

10.2. Users shall be able to change Service Packages at any time effective from the next billing period. If Users change the Service Packages, the surcharge will be deducted from the Service Fee in the next collection period.

10.3. Services Fee will include all fees as well as usage time of Services. Vagon reserves the option to charge the User more frequently for fees accrued if the Company suspects that your account is fraudulent or at risk of non-payment. Vagon also reserves the option to provide a prepayment method through which the User deposits balance before using the service and service charges will be deducted from this balance and when necessary through their payment methods. All the payments will be made by the Stripe. Vagon reserves the right to change the Service Fee and charge a payment processing fee for any transaction. In case of any change to the Service Fee, performance usage fees and additional storage fees are applicable via notice and monthly fees shall be charged by the beginning of the next month after the notification regarding the change.

10.4. All fees are calculated without including the taxes payable by Vagon. All taxes payable by Vagon, to the extent permitted by the applicable law, shall be borne by the Users (taxes will be added to the subscription fee). Users shall provide enough information upon request that is reasonably necessary for Vagon to determine if we are obligated to collect taxes from the User.

11. REFUND POLICY

11.1. Monthly subscription fee including any recurring additional storage fee is fully refundable if the refund request is made within the first 24 hours after subscription start or renewal, it's 50% refundable if the request is made within the 24-48 hours after subscription start or renewal and it's 25% refundable if the request is made within 48-72 hours after subscription start or renewal. After 72 hours of subscription start or renewal, this fee is not refundable. With all refund requests, Vagon has the right to cancel all provided service and User's workstation including all data in it will be deleted permanently.

11.2. Additional storage fee is fully refundable if the refund request is made within the first 24 hours after additional storage purchase, it's 50% refundable if the request is made within the 24-48 hours after additional storage purchase and it's 25% refundable if the request is made within 48-72 hours after additional storage purchase. After 72 hours of additional storage purchase, this fee is not refundable. Since storage increase cannot be undone, with all refund requests, Vagon has the right to cancel all provided service and the User's workstation including all data in it will be deleted permanently.

11.3. Workstation performance usage charges are not refundable. Unused balance amounts are both transferrable to the following months and refundable upon request. In case of a refund request, unused balance amounts are transferred to the user by cutting the related payment processing fee(s).

11.4. Trial offer payments are not refundable. If applicable, further fees during the trial period are subject to the related refund conditions independent of the trial period.

12. BETA SERVICES

12.1. Vagon might from time to time offer beta services or features and functionalities that it is still testing and evaluating (Collectively "Beta Services"). If Users desire to test and evaluate beta services, they may do so. In this case, Users acknowledge that beta services are still under development and testing and that Vagon has not made the Beta Services generally available as a formal Vagon product or service. Vagon may determine the fees for the Beta Services in its sole discretion; however shall inform the Users about fees before they start using the Beta Services.

12.2. Vagon may, in its sole discretion, provide Users with certain support and consultation services with respect to the Beta Services free of charge to assist in the evaluation and testing activities under this Agreement; provided, however, that Vagon is not obligated to correct any bugs, defects, or errors in the Product or otherwise support or maintain the Beta Services. Vagon, in its sole discretion may discontinue any support or consulting services at any time.

12.3. Users may provide feedback to Vagon about Beta Services. All Feedback is provided at the sole discretion of User. Users hereby assign to Vagon all right, title and interest in the Feedback, including all intellectual property rights therein.

12.4 BETA DISCLAIMER – THE BETA SERVICE LICENSED HEREUNDER MIGHT CONTAIN DEFECTS AND BUGS AND IS AVAILABLE ON AN “AS IS” AND “AS AVAILABLE” BASIS FOR THE SOLE PURPOSE OF PROVIDING VAGON WITH FEEDBACK ON QUALITY, USABILITY, PERFORMANCE AND THE IDENTIFICATION OF DEFECTS. USERS ARE ADVISED TO SAFEGUARD IMPORTANT DATA, TO USE CAUTION AND NOT TO RELY IN ANY WAY ON THE CORRECT FUNCTIONING OR PERFORMANCE OF THE SERVICES. THE POSSIBILITY OF THE CORRUPTION OF DATA AND/OR THE LOSS OF DATA EXISTS. YOU ASSUME ALL RISKS AND ALL COSTS ASSOCIATED WITH THE USE OF THE BETA SERVICES.

13. GENERAL DISCLAIMER

13.1. YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF SERVICES IS AT YOUR OWN RISK. YOU ACKNOWLEDGE THAT VAGON HAS NO CONTROL OVER, AND NO DUTY TO TAKE ANY ACTION REGARDING WHICH USERS GAIN ACCESS TO OR USE THE SERVICES, WHAT EFFECTS THE CONTENT MAY HAVE ON YOU, HOW YOU MAY INTERPRET OR USE THE CONTENT, OR WHAT ACTIONS YOU MAY TAKE AS A RESULT OF HAVING BEEN EXPOSED TO THE CONTENT. YOU RELEASE VAGON FROM ALL LIABILITY FOR YOU HAVING ACQUIRED OR NOT ACQUIRED CONTENT THROUGH THE SERVICE. VAGON MAKES NO REPRESENTATIONS CONCERNING ANY CONTENT CONTAINED IN OR ACCESSED THROUGH THE SERVICES AND VAGON WILL NOT BE RESPONSIBLE OR LIABLE FOR THE ACCURACY, COPYRIGHT COMPLIANCE, LEGALITY OR DECENCY OF MATERIAL CONTAINED IN OR ACCESSED THROUGH THE SERVICES. VAGON SHALL MAKE NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR NON-INFRINGEMENT OR THAT ANY CONTENT, OR THAT USER CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED.

13.2. VAGON DOES NOT GUARANTEE THAT THE SERVICES ARE PROVIDED UNINTERRUPTED AND INDEFINITE. YOU CAN NOT REFER TO VAGON WHEN ANY INTERRUPTION AND SYSTEMATIC PROBLEMS OCCUR. VAGON CAN PAUSE THE SERVICES ANYTIME IT WANTS.

14. LIMITATION OF LIABILITY

14.1. To the extent permitted by applicable law, Vagon shall not be liable for any direct, indirect, negligent or deliberate damages arising from any loss of profit, loss of income, loss of any User, loss of data, and legal and criminal sanctions arising from such losses.

14.2. Vagon shall not be liable for any damages caused to the Users directly or indirectly due to the slowdown, rupture, interruption of access in the Services or loss of User Content and so on provided to the Users.

14.3. In the event that a User violates the Agreement or uses the Services for unlawful purposes, Vagon has the right to (i) terminate or suspend the Agreement, and (ii) restrict or close access to the User Content and/or Services, with its sole discretion.

14.4. In the event that Vagon directly or indirectly incurs any damage due to the circumstances and conditions specified in Article 14, Vagon reserves the right to reclaim these damages from the User concerned.

15. INDEMNIFICATION

Users agree to release and to indemnify, defend and hold Vagon, and its affiliates and agencies, as well as the officers, directors, employees, shareholders, and representatives, harmless from and against any and all losses, liabilities, expenses, damages, costs (including attorneys' fees and court costs), claims or actions of any kind whatsoever arising of resulting from Users use of the Services, Users violation of the Agreement, and any of the Users acts or omissions that implicate publicity rights, defamation or invasion of privacy. Vagon reserves the right, at its own expense, to assume exclusive defense and control of any matter otherwise subject to indemnification by User and, in such case, Users agree to cooperate with Vagon in defense of such matter.

16. NO WAIVER

Failure by Vagon to exercise its rights or to apply certain provisions under this Agreement shall not affect the application of this right or provision at a later date and shall not constitute a waiver. In the event of any violation of any clause of the Agreement by the User, the failure of Vagon to act against this breach shall not constitute a waiver.

17. MODIFICATIONS

17.1. Vagon reserves the right to amend, update and make any additions to this Agreement, to the extent required. This change will be notified via e-mail, Applications pop-up to Users before it is applied. If Users continue to benefit from the Services, Users

will be deemed to be aware of and approve the new version of the Agreement and all the amendments.

17.2. By accepting the updated version of Agreement, and/or keep using the Services, all previous Agreements or any other User's agreements shall be terminated.

18. TERM AND TERMINATION

Subject to the termination terms as provided below, this Agreement will commence upon the Effective Dates and will remain in effect until terminated. Vagon may terminate and suspend all or a part of the Services and your access to the Services immediately, without prior notice or liability, if you breach any provision and/or article of the Agreement. Upon termination by Vagon, Your access and Your right to use the Services shall immediately cease. Upon any termination of this Agreement, Company will make all User Content available to User for electronic retrieval for a period of five days (5) days, but thereafter Company may, but is not obligated to, delete stored User Content. Vagon shall not be held liable for deleting stored User Content and any damage this may cause to the User in case of termination under this Section. All sections of this Agreement, which by their nature should survive termination, will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, ownership of Services and limitations of liability. User will be responsible for proportional Fees up to and including the last day on which the Services are provided and any advanced Fee will be returned, prorated through last day of Services, to User with thirty (30) days of termination.

19. SEVERABILITY

If any article or a part of an article within the Agreement, for whatever reason becomes invalid or unenforceable, the subject article will be considered inexistent and will have no effect or validity.

20. CONFIDENTIALITY

The Confidential Information of either party may be used by the other party solely to exercise its rights and perform its obligations under this Agreement or as otherwise permitted herein. Each party will only disclose Confidential Information of the other party

to the employees, service providers or contractors of the recipient party who need to know the Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than each party's duty under this Agreement. Both the Company and the User will diligently protect the confidentiality of the other party's Confidential Information. The above protections of Confidential Information will not apply if the recipient can show by written records that the information: (a) was already rightfully known to the recipient at the time of disclosure; (b) was disclosed to the recipient by a third-party who had the right to make the disclosure without any confidentiality restrictions; (c) is, or, through no fault of the recipient, has become generally available to the public; or (d) was independently developed by the recipient without access to, or use of, discloser's Confidential Information. The recipient may disclose Confidential Information to the extent the disclosure is required by law or regulation or the listing rules of any stock exchange. The recipient will provide the other party notice, when practicable.

21. ASSIGNMENT

This Agreement and the rights, duties, and obligations hereunder may not be assigned or delegated by Users without the prior written consent of Vagon. Any assignment of rights or delegation of duties or obligations hereunder made by Users without such prior written consent of Vagon shall be void and of no effect.

22. NOTIFICATIONS

Notifications that may need to be made pursuant to the Agreement shall be made by e-mail to the specified e-mail address during the registration process. All of the User communications will be pursued by the info@vagon.io. In case of a change of the e-mail address, unless the related User changes his/her e-mail address on the Applications, all notifications sent to the last known address will be deemed valid, binding and duly served. All of the communications and notifications must be in the English language.

23. EFFECTIVENESS

This Agreement shall be effective starting from the registration and accepting date of it. Any amendments to this Agreement shall be effective with the terms of article 17, Modifications.

24. LANGUAGE

All communications and notices to be made or given pursuant to this Agreement must be in the English language.

25. DISPUTE RESOLUTION

The parties agree to exercise reasonable efforts, to resolve any dispute in good faith. If a dispute is not resolved within thirty (30) days of notice, either party may resort to a formal proceeding at the courts of Delaware, USA.

26. APPLICABLE LAW AND JURISDICTION

All rights and obligations hereunder will be governed by the laws of the State of Delaware, without regard to the conflicts of law provisions of such jurisdiction. In case of any dispute courts of County of New Castle, Delaware shall have jurisdiction to resolve such dispute.

27. SIGNATURES

This Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute one and the same instrument. This Agreement and any counterpart original may be executed and delivered by facsimile transmission. The facsimile signature shall be valid and acceptable for all purposes as if it were an original.



Ready to focus on your creativity?

Vagon gives you the ability to create & render projects, collaborate, and stream applications with the power of the best hardware.

