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# Terms of Service

Last Revised: June 20, 2023



PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY CHECKING THE BOX TO AGREE TO THESE TERMS OF SERVICE OR BY ACCESSING OR USING THE SERVICES, YOU AGREE TO BE BOUND BY THESE TERMS OF SERVICE AND ALL TERMS INCORPORATED BY REFERENCE. IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE, DO NOT USE THE SERVICES.

These Terms of Service (these "**Terms**") between you and Zebrafish Labs, Inc. ("**imgix**") govern your access to, use of, and participation in imgix's website, products, and services

(collectively, the "**Services**"). These Terms do not change the terms or conditions of any other written agreement you may have with imgix. If you are using the Services on behalf of an entity, you represent and warrant that you are authorized to accept these Terms on the entity's behalf and that the entity agrees to be responsible to imgix if you violate these Terms.

For purposes of these Terms, "**imgix**" refers to imgix and imgix's investors, directors, officers, employees, agents, representatives, and assigns.



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## 1. PRIVACY

Please see imgix's Privacy Policy at <https://www.imgix.com/privacy> for information about how imgix collects, uses, and discloses information about individuals who use the Services.

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## 2. ACCOUNT

To access certain areas and features within the Services, you must create an account. You agree to (a) provide accurate, truthful, current, and complete information when creating an account; (b) maintain and promptly update your account information; (c)

maintain the security of your account by not sharing your password with others and restricting access to your account and your computer; (d) promptly notify imgix if you discover or otherwise suspect any security breaches related to the Services; and (e) take responsibility for all activities that occur under your account and accept all risks of unauthorized access.

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### 3. THE SERVICES

**Overview of Services.** The Services may include imgix's web API, image and video processing, image and video analysis, image and video rendering, image and video caching, image and video routing, and image and video delivery. The Services described under the "API Services" paragraph, do not include image hosting or storage except for the limited caching described below. However, the Services do provide certain hosted processing and rendering services ("Hosted Services") as further described in the "Hosted Services" paragraph below.

**API Services.** The Services that imgix offers via its web API ("API Services") enable you to control the actions imgix takes with respect to your images and videos without uploading the images and videos to the Services. To use the API Services, you must connect your image or video hosting or storage location to the API Services. You are responsible for updating your site or service's code to work with the API Services. The API Services



provide limited caching and rendering services that imgix uses during the course of providing the Services to you. Please know that if an image or video cached via the API Services is removed from your storage or hosting location, it may remain on imgix's caching servers for a limited time.

**Hosted Services.** imgix may make certain Hosted Services available, which may enable users to upload images, use hosted processing features and functionality, and deliver or route such images. You may use the Hosted Services only for Sandbox. Without limiting the foregoing or any other terms of these Terms, you may not use the Hosted Services to serve image traffic other than for testing purposes. Notwithstanding Section 12 (Change to the Services) below, imgix reserves the right to modify, discontinue or suspend access to the Hosted Services at any time for any reason, without notice or obligation to you.

**Content Delivery.** imgix can be accessed for content delivery of your User Content (as defined below). When you access imgix for content delivery, imgix may cache your User Content for performance reasons. When cached User Content is accessed, you will be charged only for bandwidth out of imgix. Accessing User Content that has not been cached will trigger a render on imgix, which incurs additional charges. Although imgix does not guarantee that any User Content will be cached, imgix will strive to cache your User Content for at least the lesser of (a) the amount of time you indicate you would like your User Content cached or (b) 30 days (the "Cache Period"). imgix will not charge you to render User Content during the Cache Period, even if the User Content has been



removed from cache. imgix may cache User Content for longer than the Cache Period. If you do not use imgix for content delivery, then imgix will not cache your User Content, and every request to access such User Content will incur rendering charges. For purposes of the above, User Content hosted via the Hosted Services will be treated as though it has been cached by imgix.

URL. imgix will provide you with a custom domain name that you may select for your imgix User Content (as defined below). You will have the opportunity to select an alternative domain name at any time. imgix does not guarantee the availability of any domain name. imgix reserves the right to change your domain name with 14 days' advance notice to you. If you do not change your domain name before the 14-day notice period expires, imgix will select an alternative domain name for you.



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## 4. FEES AND PAYMENTS

Pricing for the Services is located at <https://www.imgix.com/pricing>. imgix's Payment Policy, as set forth at <https://www.imgix.com/payments>, governs your payment of the Services and is incorporated herein by reference.

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## 5. USER CONTENT

**Intellectual Property of User.** You retain all rights in images and other content that you upload to the Services, other than Feedback (as defined below), including messages, materials, data, information, text, music, sound, photos, video, graphics, applications, code, or other items or materials ("User Content").

**License.** You hereby grant imgix a non-exclusive, revocable license to use, store, display, reproduce, re-post, modify, create derivative works of (including through aggregation), perform the User Content, solely in the course of providing the Services and for its internal business purposes.

**Acceptable Use.** You will not (and will not allow or authorize any third party to) post, upload to, transmit, distribute, store, create, solicit, disclose, or otherwise publish through the Services any of the following without the express prior written consent of imgix:

User Content that is unlawful, libelous, defamatory, obscene, pornographic, exploitive of children, or invasive of privacy or publicity right;

User Content that is false, misleading or deceptive, including to content that appears confusingly similar to any other product or application or misrepresents or falsely implies an association with another company;



User Content that would constitute, encourage, or provide instructions for a criminal offense, or violate any law or regulation;

User Content that, in imgix's reasonable judgment, may expose imgix or others to harm or liability;

User Content that contains any information or content that you do not have a right to make available under any law or under contractual or fiduciary relationships;

User Content that may infringe the patent, trademark, trade secret, copyright, intellectual property, privacy, or other proprietary right of any party;

Private information of any third parties, including addresses, phone numbers, and payment card information; or

User Content that includes viruses, corrupted data, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware, or other harmful, disruptive, or destructive files.



imgix reserves the right, but does not have the obligation, to monitor User Content and to block access to any User Content that violates these Terms or that imgix finds otherwise objectionable. You are solely responsible for creating backup copies of and replacing User Content at your sole cost and expense. If you remove any User Content from the Services, imgix may retain User Content for a commercially reasonable period of time for backup, archival, or audit purposes.

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## 6. IMGIX MATERIAL

**Intellectual Property of imgix.** imgix reserves all rights not expressly granted in these Terms. Except for the license expressly stated in these Terms, you are not granted any rights in or to the Services by implication, estoppel, or other legal theory, and all rights in and to the Services not expressly granted in these Terms are hereby reserved and retained by imgix. imgix reserves all right, title, and interest to and in all information, materials, and content (including text, graphics, data, formatting, graphs, designs, HTML, look and feel, photographs, music, sounds, images, software, videos, designs, typefaces, source and object code, format, queries, algorithms, and other content) that is not User Content (collectively "imgix Material"). imgix Material is protected in all forms, media, and technologies now known or later developed.



**License.** On the condition that you comply with these Terms, imgix hereby grants you a non-exclusive, non-transferable, revocable license to access the Services (including any imgix Material therein) solely for the purpose of enabling you to use the Service in the manner permitted by these Terms. If imgix, in its sole discretion, elects to provide any upgrade that replace or supplement the original Services, this license will govern any such upgrade unless such upgrade is accompanied by a separate license, in which case the terms of that license will govern.

**Restrictions.** You are solely responsible for your conduct (and the conduct of anyone who uses the Services on your behalf) with respect to the Services, which you use at your own



risk. Except as expressly permitted in writing by imgix, you will not do, and will not permit any third party to do, any of the following:

copy, adapt, hack, or reproduce the Services;

distribute the Services or make the Services available over a network where it could be used by multiple devices at the same time;

rent, lease, lend, sell, or sublicense the Services;

modify, port, translate, or create derivative works of the Services;

remove, alter, or obscure any copyright, trademark, or other proprietary rights notice or labels on or in the Services;

decompile, reverse engineer, disassemble, attempt to derive the source code, underlying ideas, or algorithms of the Services or any part of the Services, except to the extent required by applicable law;

use the Services in any manner that could interfere with, disrupt, negatively affect, or inhibit imgix's other users from fully enjoying the Services or that could damage, disable, overburden, or impair the functioning of the Services;

stalk, intimidate, threaten, harass, or cause discomfort to other users of the Services;

impersonate or use the Services by misrepresenting your affiliation with a person or entity;

use the Services for any illegal or unauthorized purpose or engage in, encourage, or promote any illegal activity, or any activity that violates these Terms; or

infringe or violate the rights of imgix or any third party.



If you violate (or are alleged to have violated) any of the foregoing restrictions, your license to use the Services will immediately and automatically terminate, and you may have infringed the rights of imgix, which may subject you to prosecution and damages.

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## 7. FEEDBACK

imgix will own exclusive rights, including all intellectual property rights, to any feedback, suggestions, ideas, or other information or materials regarding imgix or the Services that you provide, whether by email, posting through the Services, or otherwise ("Feedback"). For the avoidance of doubt, Feedback does not include any User Content that you upload for the sole purpose of utilizing the Services. Any Feedback you submit is non-confidential and will become the sole property of imgix. imgix will be entitled to the unrestricted use and dissemination of such Feedback for any purpose, commercial or otherwise, without acknowledgment or compensation to you. You waive any rights you may have to the Feedback (including any copyrights or moral rights). Do not send imgix Feedback if you expect to be paid or want to continue to own or claim rights in your Feedback. imgix also has the right to disclose your identity to any third party who is claiming that any content posted by you constitutes a violation of their intellectual property rights, or of their right to privacy. Further, you agree not to submit any Feedback that is defamatory, illegal, offensive, or otherwise violates any right of any third party, or breaches any agreement between you and any third party.



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## 8. METADATA AND ANALYTICS

imgix uses proprietary software to analyze images it processes. Whenever imgix processes an image for you, it observes, collects, and analyzes the metadata of the image. imgix may use this metadata it collects to learn more about the images it processes and help improve the Services. imgix also collects analytics data about images it caches and processes. For example, imgix may track how often images are accessed, performance data, and other such technical information. imgix reserves all rights in and to any metadata and analytics it collects in the course of providing the Services.



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## 9. THIRD-PARTY CONTENT

imgix may display content from third parties through the Services or may provide information about or links to third-party products or services. Your interactions with any such third parties, and any terms, conditions, warranties, or representations associated with such interactions, are solely between you and the applicable third parties. imgix is not responsible or liable for any loss or damage of any sort incurred as the result of any such interactions or as the result of the presence of such third-party information made available through the Services.

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## 10. TRADEMARKS

imgix's name, imgix's trademarks, imgix's logos, and any other imgix product, service name, or slogan included in the Services are property of imgix and may not be copied, imitated, or used (in whole or in part) without imgix's prior written consent. The look and feel of the Services, including all custom graphics, button icons, and scripts constitute service marks, trademarks, or trade dress of imgix and may not be copied, imitated, or used (in whole or in part) without imgix's prior written consent. All other trademarks, registered trademarks, product names, and company names or logos mentioned in the Services ("Third Party Trademarks") are the property of their respective owners, and the use of such Third Party Trademarks inures to the benefit of each owner. The use of such Third Party Trademarks is intended to denote interoperability and does not constitute an affiliation by imgix and its licensors with such company or an endorsement or approval by such company of imgix or its licensors or their respective products or services.



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## 11. COPYRIGHT POLICY

**Repeat Infringer Policy.** In accordance with the Digital Millennium Copyright Act (DMCA) and other applicable law, imgix has adopted a policy of terminating, in appropriate circumstances and at imgix's discretion, users who are deemed to be repeat infringers.

imgix also may, at its discretion, limit access to the Services and terminate access of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

**Copyright Complaints.** If you believe that anything on the Services infringes upon any copyright that you own or control, you may file a notification with imgix's Designated Agent as set forth below:

Designated Agent: Christopher Zacharias

Address of Designated Agent: 423 Tehama St., San Francisco CA 94103

Telephone Number of Designated Agent: (415) 484-5964

Fax Number of Designated Agent: (415) 484-7735

Email Address of Designated Agent: [dmca@imgix.com](mailto:dmca@imgix.com)

Please see 17 U.S.C. § 512(c)(3) for the requirements of a proper notification. If you knowingly misrepresent in your notification that the material or activity is infringing, you may be liable for any damages, including costs and attorneys' fees, incurred by imgix or the alleged infringer as the result of imgix relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing. imgix does not guarantee that it will have the capability to remove infringing content in its



entirety, including infringing content that has been stored in a viewer's cache, but may block the display of any infringing content.

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## 12. CHANGES TO THE SERVICES

imgix may review, improve, change, or discontinue (temporarily or permanently) the Services or any features, information, materials, or content on the Services. If imgix makes a material change to the Services, imgix will notify you in advance, via email or through other communications channels, and give you the opportunity to terminate your use of the Services.

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## 13. SUSPENSION OR TERMINATION

imgix may suspend or terminate your license to access or use the Services either immediately upon your breach of these Terms or for convenience with 30 days' advance notice. You can terminate your account with imgix at any time by following the instructions at <https://dashboard.imgix.com/account/delete>. You will no longer be able to access or use the Services following your termination or suspension. All payments or fees are due at the time of termination, with refunds and proration governed by the terms of imgix's Payment Policy set forth at <https://www.imgix.com/payments>. imgix will use

commercially reasonable efforts to remove your User Content from the Services within 30 days of termination. You acknowledge that User Content may be stored in a cache. imgix reserves the right, but does not undertake any duty, to take appropriate legal action including the pursuit of civil, criminal, or injunctive redress against you for continuing to use the Services during suspension or after termination. imgix may recover its reasonable attorneys' fees and court costs from you for such actions. These Terms will remain enforceable against you while your license to access or use the Services is suspended and after it is terminated. Except for the license granted to you to access and use the Services, all of the terms, conditions, and restrictions set forth in these Terms will survive termination of these Terms.



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## 14. DISCLAIMERS

YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. IMGIX DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THESE TERMS, THE SERVICE, THE IMGIX MATERIAL, AND THIRD PARTY TRADEMARKS, WHETHER ALLEGED TO ARISE BY OPERATION OF LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PURPOSE, NON-INFRINGEMENT AND CONDITION OF TITLE.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IMGIX DOES NOT WARRANT, AND DISCLAIMS ALL LIABILITY FOR (A) THE COMPLETENESS, ACCURACY, AVAILABILITY, TIMELINESS, SECURITY OR RELIABILITY OF THE SERVICE OR ANY IMGIX MATERIAL; (B) ANY HARM TO YOUR COMPUTER SYSTEM, LOSS OF DATA, OR OTHER HARM THAT RESULTS FROM YOUR ACCESS TO OR USE OF THE SERVICE, ANY IMGIX MATERIAL, OR ANY USER CONTENT; (C) THE DELETION OF, OR THE FAILURE TO STORE OR TO TRANSMIT, ANY USER CONTENT AND OTHER COMMUNICATIONS MAINTAINED BY THE SERVICE; AND (D) WHETHER THE SERVICE WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE, OR ERROR-FREE BASIS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM IMGIX OR THROUGH THE SERVICE, WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE IN THESE TERMS.



CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES IN CONTRACTS WITH CONSUMERS, SO, IF YOU USE OUR SERVICES FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES, SOME OR ALL OF THE DISCLAIMERS IN THIS SECTION MAY NOT APPLY TO YOU.

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## 15. INDEMNIFICATION



You will defend, indemnify, and hold harmless imgix from and against any actual or threatened suits, actions, proceedings (at law or in equity), claims, damages, payments, deficiencies, fines, judgments, settlements, liabilities, losses, costs, and expenses (including reasonable attorneys' fees, costs, penalties, interest, and disbursements) arising from or related to (i) your conduct, or the conduct of any third party you authorize to act on your behalf, with respect to the Services, including any User Content or Feedback you or such third party provides, or (ii) the violation (or alleged violation) of these Terms or the rights of any third party by you or any third party you authorize to act on your behalf with respect to the Services.

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## 16. LIMITATION OF LIABILITY

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IMGIX WILL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES WHATSOEVER, ARISING OUT OF OR RELATED TO THESE TERMS, THE SERVICE, THE IMGIX MATERIAL, OR THIRD PARTY TRADEMARKS, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY), EVEN IF IMGIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE AGGREGATE

LIABILITY OF IMGIX EXCEED THE GREATER OF U.S. \$100.00 OR THE AMOUNT YOU PAID IMGIX IN THE PAST SIX MONTHS FOR THE SERVICE GIVING RISE TO THE CLAIM.

THE LIMITATIONS IN THIS SECTION WILL NOT APPLY TO ANY WILLFUL MISCONDUCT, GROSS NEGLIGENCE, OR FRAUD OF IMGIX. IN ADDITION, SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU.

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## **17. VENUE; GOVERNING LAW**

The state and federal courts located in San Francisco County, California, will have exclusive jurisdiction over any suit in connection with the Services or these Terms that is not subject to arbitration, and you and imgix hereby irrevocably and unconditionally consent and submit to the exclusive jurisdiction of such courts. These Terms and your access to or use of the Services will be governed by, construed in accordance with, and enforced under the laws of the State of California without resort to its conflict of law provisions.

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## **18. AMENDMENT**



imgix reserves the right to make changes or modifications to these Terms from time to time, in its sole discretion. If imgix makes changes to these Terms, imgix will provide you with notice of such changes, such as by sending you an email or by posting the amended Terms via the Services and updating the "Last Updated" date at the top of these Terms. All amended Terms will become effective immediately on the date they are posted to the Services unless imgix states otherwise in its notice regarding the amended Terms. Any amended Terms will apply prospectively to use of the Services after such changes become effective. Your continued use of the Services following the effective date of such changes will constitute your acceptance of such changes. If you do not agree to any amended Terms, you must discontinue using the Services.



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## 19. MISCELLANEOUS

These Terms contain the entire agreement, and supersede all prior and contemporaneous understandings between the parties regarding the Services. These Terms do not alter the terms or conditions of any other electronic or written agreement you may have with imgix for the Services or for any other imgix product or service or otherwise. In the event of any conflict between these Terms and any other agreement you may have with imgix, the terms of that other agreement will control only if these Terms are specifically identified and declared to be overridden by such other agreement. Nothing in these Terms creates or can be construed to create an employer/employee,

joint venture, or partnership relationship between you and imgix. Except as otherwise expressly elsewhere in these Terms, there will be no third party beneficiaries to these Terms. imgix's failure or delay in exercising any right, power, or privilege under these Terms will not operate as a waiver thereof. If any provision of these Terms is or becomes unlawful, void, or otherwise unenforceable (including the warranty disclaimers and liability limitations set forth above), then that provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision, and the remaining provisions of these Terms will continue in full force and effect. imgix will not be liable for any loss or damage arising from any event beyond imgix's reasonable control, including, but not limited to, flood, extraordinary weather conditions, earthquake, or other act of God, fire, war, insurrection, riot, labor dispute, accident, action of government, communications, power failure, or equipment or software malfunction. Headings of sections are for convenience only and will not be used to limit or construe such sections. As used in these Terms, "including" means "including (without limitation)." You may not assign or transfer any of your rights or obligations under these Terms without prior written consent from imgix. imgix may assign or transfer any or all of its rights under these Terms, in whole or in part, without obtaining your consent or approval.



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## 20. QUESTIONS

If you have any questions regarding the use of the Services, please email imgix at [support@imgix.com](mailto:support@imgix.com).





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