

Terms of Service

Krikey Terms of Service for AI Animation Services

Last Updated: April 3, 2024

Please read these Terms of Service (“Terms”) and our Privacy Policy (www.krikey.ai/privacy-policy) (“Privacy Policy”) carefully because they govern your use of our website located at www.krikey.ai (the “Site”) and our AI-powered animation generative services accessible via the Site offered by Krikey, Inc. (“Krikey”). To make these Terms easier to read, the Site, our services are collectively called the “Services.”

IMPORTANT NOTICE REGARDING ARBITRATION FOR U.S. USERS: WHEN YOU AGREE TO THESE TERMS YOU ARE AGREEING (WITH LIMITED EXCEPTION) TO RESOLVE ANY DISPUTE BETWEEN YOU AND Krikey THROUGH BINDING, INDIVIDUAL ARBITRATION RATHER THAN IN COURT. PLEASE REVIEW CAREFULLY SECTION 15 “DISPUTE RESOLUTION” BELOW FOR DETAILS REGARDING ARBITRATION.

IMPORTANT NOTICE REGARDING THIRD-PARTY SERVICES: THE SERVICES MAY CONTAIN LINKS TO THIRD PARTY WEBSITES OR RESOURCES (EACH A “THIRD-PARTY SERVICE”) AS FURTHER DESCRIBED IN SECTION 4(b) BELOW. PLEASE CAREFULLY REVIEW ANY TERMS AND CONDITIONS APPLICABLE TO USE OF SUCH THIRD-PARTY SERVICE, INCLUDING ANY CONTENT MADE AVAILABLE VIA SUCH THIRD-PARTY SERVICE. YOU ARE SOLELY RESPONSIBLE FOR YOUR USE OF ANY THIRD-PARTY SERVICE, INCLUDING WITHOUT LIMITATION ANY RIGHTS CLEARANCE OBLIGATIONS THAT MAY APPLY TO USE OF CONTENT SOURCED VIA ANY THIRD-PARTY SERVICE.

1. **Agreement to Terms.** By using our Services, you agree to be bound by these Terms. If you don’t agree to be bound by these Terms, do not use the Services. If you are accessing and using the Services on behalf of a company (such as your employer) or other legal entity, you represent and warrant that you have the authority to bind that entity to these Terms. In that case, “you” and “your” will refer to that entity.
2. **Privacy Policy.** Please review our Privacy Policy, which also governs your use of the Services, for information on how we collect, use and share your information.
3. **Changes to these Terms or the Services.** We may update the Terms from time to time in our sole discretion. If we do, we’ll let you know by posting the updated Terms on the Site and/or may also send other communications. It’s

important that you review the Terms whenever we update them or you use the Services. If you continue to use the Services after we have posted updated Terms it means that you accept and agree to the changes. If you don't agree to be bound by the changes, you may not use the Services anymore. Because our Services are evolving over time we may change or discontinue all or any part of the Services, at any time and without notice, at our sole discretion.

4. Use of the Services.

1. Krikey Services. Subject to your compliance with these Terms (including the payment of all applicable fees), Krikey grants you a non-exclusive right to access and use the Services in accordance with these Terms. Our Services provide a proprietary platform that allows users to enter a text prompt (a "User Prompt") or provide a link to or upload a video (together with the User Prompts, "User Input") to generate a 3D animation of a Krikey Avatar or a third-party Partner Avatar ("Service Animation"), and/or (ii) short music track ("Service Track"). To enhance your project, you can also upload custom content in the form of characters, backgrounds and audio to display or use as part of your project environment on the Services (each a "Pre-Existing User Asset"). For example, you may choose to add a Pre-Existing User Asset to the Services in the form of a custom background for an animated avatar video generated via the Services.
For the purposes these Terms, "Krikey Avatar" means an avatar comprised of an avatar image from Krikey's character catalog and the corresponding 3D model (each a "Krikey Model"); and "Partner Avatar" means a 3D avatar generated through a third-party partner's platform, such as the Ready Player Me platform provided by Ready Player Me OÜ. We also refer to the Service Animation, the Krikey Avatar and Service Track together as "Krikey Content". Our Services also allow you to customize the appearance of the Krikey Avatar you wish to animate, such as changing the avatar's clothes and hairstyle. Krikey Content does not include your Pre-Existing User Assets. For more information on Pre-Existing User Assets and the treatment of other content when you use the Services, see Section 7(Content) below.
2. Links to Third Party Services. The Services may allow you to access Third-Party Services. We provide access only as a convenience and are not responsible for the content, products or services on or available from those resources or links displayed on such services. If you use a Third-Party Service, you are subject to, and responsible for compliance with, the applicable terms and conditions for such Third-Party Service and any other obligations you have to any third-party as a result of your use of the Third-Party Service. You acknowledge sole responsibility for, and assume all risk arising from, your use of any Third-Party Service. By

allowing you to display User Content via the Services, Krikey does not suggest, warrant or guaranty that your use of any content in connection with Services is allowed by any third-party, nor that your use complies with any laws or regulations that may apply to your use of any content. Krikey is not liable for your failure to comply with any applicable laws, treaties and regulations or any contracts, rules, policies or procedures applicable to your activities or your use of any Third-Party Service and Krikey disclaims any and all liability related thereto.

5. **Registration and Access.** You may use the Services only if you are at least 18 years of age or older and capable of forming a binding contract with Krikey and not otherwise barred from using the Services under applicable law. To use certain features of the Services, you'll need to register and create an account through certain third-party services such as Google (an "Third-Party Account"). We'll create your account by extracting from your Third-Party Account certain personal information such as your name and email address and other personal information that your privacy settings on the Third-Party Account permit us to access. It's important that you provide us with accurate, complete and current account information and keep this information up to date. If you don't, we might have to suspend or terminate your account. To protect your account, keep the account details and password confidential, and notify us right away of any unauthorized use. You're responsible for all activities that occur under your account.
6. **Fees and Payment.** Krikey requires payment of a fee for use of the Services (or certain portions thereof) and you agree to pay such fees. You have the option of making a one-time payment ("One-Time Payment") or purchasing a subscription ("Subscription") or AI Asset Credits (as defined below in Section 6(d)) for such use.
 1. **General.** When you make a One-Time Payment or purchase a Subscription or AI Asset Credits (each, a "Transaction"), you expressly authorize us (or our third-party payment processor) to charge you for such Transaction. We may ask you to supply additional information relevant to your Transaction, including your credit card number, the expiration date of your credit card and your email and postal addresses for billing and notification (such information, "Payment Information"). You represent and warrant that you have the legal right to use all payment method(s) represented by any such Payment Information. When you initiate a Transaction, you authorize us to provide your Payment Information to third parties so we can complete your Transaction and to charge your payment method for the type of Transaction you have selected (plus any applicable taxes and other charges). You may need to provide additional information to verify your identity before completing your Transaction (such information is

included within the definition of Payment Information). By initiating a Transaction, you agree to the pricing, payment and billing policies applicable to such fees and charges, as posted or otherwise communicated to you. All payments for Transactions are non-refundable and non-transferable except as expressly provided in these Terms. All fees and applicable taxes, if any, are payable in U.S. dollars.

2. **Subscriptions.** If you purchase a Subscription for use of the Services, you will be given the option to select the desired plan for your Subscription, as set forth at krikey.ai/pricing/ai ("Pricing Page"). If you purchase a Subscription, you will be charged the Subscription fee applicable to the type of Subscription you select, plus any applicable taxes and other charges (collectively, "Subscription Fee"). You will be charged at the beginning of your Subscription and, as applicable, each month or year thereafter at the then-current Subscription Fee. BY PURCHASING A SUBSCRIPTION, YOU AUTHORIZE KRIKEY TO INITIATE RECURRING NON-REFUNDABLE PAYMENTS AS SET FORTH BELOW. If you purchase a Subscription, we (or our third-party payment processor) will automatically charge you, as applicable, on the monthly or annual anniversary of the commencement of your Subscription or the frequency reflected for your particular Subscription plan, using the Payment Information you have provided until you cancel your Subscription. If you purchase an annual Subscription, no less than fifteen (15) days and no more than forty-five (45) days before your Subscription period ends, or otherwise in accordance with applicable law, Krikey will send you a reminder with the then-current Subscription Fee. By agreeing to these Terms and electing to purchase a Subscription, you acknowledge that your Subscription has recurring payment features and you accept responsibility for all recurring payment obligations prior to cancellation of your Subscription by you or Krikey. Your Subscription continues until cancelled by you or we terminate your Subscription or access to or use of the Services in accordance with these Terms.
3. **Usage.** Each Subscription has a specified set of features including a limited number of AI Asset Credits (as defined below), options to download generated content and access to different Krikey services. (Visit the [Pricing Page](#) for a description of each Subscription and its features.) If you use up all of your AI Asset Credits part of your Subscription for the applicable period, you may purchase additional AI Asset Credits, as described below.
4. **AI Asset Credits.** Payments to generate a Service Animation or Service Track are made by using the virtual currency purchased and redeemed on the Site (each, an "AI Asset Credit"). You can purchase AI Asset

Credits on the Site or receive AI Asset Credits through your Subscription. All AI Asset Credits are saved in your account and automatically debited from your account when you generate a Service Animation or Service Track. Unused AI Asset Credits do not rollover each month. AI Asset Credits are non-transferable. As further described below, purchases of AI Asset Credits are non-refundable whether or not they are used.

5. One-Time Payments. You can also make a One-Time Payment to download your specific Service Animation or Service Track and by making that payment you will be able to download that Service Animation or Service Track an unlimited number of times. Note that anytime you modify a Service Animation or Service Track, you are creating a new Service Animation or Service Track and are required to make a new One-Time Payment to download that newly generated Service Animation or Service Track. As further described below, One-Time Payments for Services Animations or Service Tracks are non-refundable.
6. Cancelling a Subscription. You may cancel your Subscription at any time. To cancel, you can send an email to support@krikey.com. Except as explicitly set forth in Section 6(h), if you cancel your Subscription you will be responsible for all Subscription Fees (plus any applicable taxes and other charges) incurred for the then-current Subscription period subject to any additional terms set forth below. If you cancel your Subscription, your right to use the Services will continue until the end of your then current Subscription period and will then terminate without further charges. Depending on the type of Subscription, the following additional cancellation terms apply:
 1. Monthly Subscriptions. If you cancel a monthly Subscription, you are responsible for all Subscription Fees (plus any applicable taxes and other charges) incurred for the then-current monthly Subscription period.
 2. Annual Subscription; Cancellation Fee. When you purchase an annual Subscription, you are responsible for the entire annual Subscription Fee at the time of purchase. If you cancel your annual Subscription before the end of the twelve (12) month Subscription period, you will not receive a refund, subject to applicable law.
7. Free Plan. Krikey offers a free trial Subscription plan with a one-time grant of a specific number of AI Asset Credits as set forth on the Pricing Page ("Free Plan"). You are entitled to only one Free Plan. The Free Plan is subject to the preset limits described on the Pricing Page. You agree that Krikey, in its sole discretion and for any or no reason, may

terminate your access to the Free Plan or any part thereof. You agree that any termination of your access to the Free Plan may be without prior notice, and you agree that Krikey will not be liable to you or any third party for such termination. When signing up for a Free Plan, you must create an account as set forth in Section 5 and provide your Payment Information as set forth in Section 6(a). By accepting a Free Plan, you agree that, when you have depleted your AI Asset Credits, you will be given the ability to select your desired Subscription and will then be charged the applicable Subscription Fee without limitation to any other part of these Terms. You authorize us to charge you using the Payment Information you provided when you accepted the offer for the Free Plan. We may validate your Payment Information and the payment method you provided by requesting a temporary authorization to the financial institution that issued your payment method. If we determine that your Payment Information or payment method is invalid, we may terminate your Free Plan. You may cancel your Free Plan as described above and terminate these Terms at any time.

8. All Purchases are Final; Exception for Annual Prepaid Subscriptions. You may cancel the Transaction for an annual prepaid Subscription and by emailing support@krikey.com to request a full refund within twenty-four (24) hours of your initial purchase. An “annual prepaid Subscription” is a Subscription for which the total Subscription Fee is charged in one payment at the beginning of the annual Subscription period. SUBJECT TO APPLICABLE LAW AND EXCEPT FOR THE REFUND OF THE FEES PAID FOR AN ANNUAL PREPAID SUBSCRIPTION AS STATED ABOVE, YOUR ONE-TIME PAYMENT OR PURCHASE OF ANY SUBSCRIPTION OR AI ASSET CREDITS IS FINAL, AND YOU WILL NOT BE ABLE TO CANCEL A PURCHASE AND/OR RECEIVE A REFUND OF ANY ONE-TIME PAYMENT, SUBSCRIPTION FEES OR YOUR PAYMENT OF AI ASSET CREDITS AT ANY TIME. If something unexpected happens in the course of completing any Transaction, we reserve the right to cancel your Transaction for any reason; if we cancel your Transaction, we'll refund any payment you have already remitted to us for such Transaction. Unused AI Asset Credits may be subject to applicable U.S. state escheat law. Unused AI Asset Credits under the Free Plan expire one month after being granted to you by Krikey, and they do not rollover to the following month. If you contact us to exercise your rights to terminate your account and delete your personal data, the AI Asset Credits remaining in your account will no longer be redeemable.
7. Content.

1. User Content. As noted above, our Services may allow you to upload, store and share content such as text, audio, graphics, video and images. Anything (other than Feedback (defined below)) that you upload, submit or otherwise make available through the Services, including your User Input and Pre-Existing User Assets (including through a Third-Party Service) is referred to as “User Content”.
2. Permissions to Your User Content. You hereby grant to Krikey a non-exclusive, transferable, worldwide, royalty-free, license, with the right to sublicense, to use, copy, modify, create derivative works based upon, distribute, publicly display, and publicly perform your User Content in connection with operating, providing, marketing and promoting the Services. In addition, to the extent that your (or any third party’s) name, voice, image, likeness, and performance (any and all an “Appearance”), is embodied or contained in your User Content, you grant Krikey a non-exclusive, transferable, worldwide, royalty-free, permission and consent, with the right to sublicense, to use such Appearance as embodied in your User Content in connection with operating, providing, marketing and promoting the Services.
3. Your Responsibility for User Content. You are solely responsible for all your User Content. You represent and warrant that you have (and will have) all rights and permissions, and have provided any notices and obtained any consents, that are necessary for Krikey to process any User Content you submit to the Services in accordance with these Terms. You represent and warrant that neither your User Content, nor your use and provision of your User Content to be made available through or otherwise processed via the Services, nor any use of your User Content by Krikey on or through the Services will infringe, misappropriate or violate a third party’s intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation. To the maximum extent permitted by law, we are not responsible or liable for the removal or deletion of (or the failure to remove or delete) any of your User Content.
4. Similarity of Content. Please note that your creation or customization of a Krikey Avatar, your User Input, and the Service Animation or the Service Track generated from your User Input may not be unique across users and the Services may generate the same or similar output for Krikey or another user. For example, you may provide a User Prompt to generate a Service Animation of an activity frequently requested by other users, such as “running” or “jumping.” Similarly, you may also provide a User Prompt to generate a Service Track for a frequently requested music genre or mood, such as “happy salsa.” Other users may also enter similar prompts and receive a similar or same Service

Animation or Service Track. You understand and agree that similar or the same Service Animations, or Service Tracks, to User Input provided by you may be delivered to other users and, in any event, such output from the Services generated for other users is not considered part your User Content.

5. Krikey Content.
 1. As between you and Krikey, Krikey retains all right, title, and interest in and to the Krikey Content. Subject to your compliance with these Terms, Krikey hereby grants you a limited, non-exclusive, worldwide, royalty-free, revocable license, to use, copy, distribute, modify, create derivative works of, perform and display the Krikey Content for (1) your own personal, non-commercial use (e.g., your own personal display or use); and (2) for your Commercial Use subject to Section 7(d)(ii). The rights granted to you under this Section 7(d) do not include the right to use Krikey Content to train an artificial intelligence model and you will not use Krikey Content for such purposes.

As used herein “Commercial Use” means any purpose that is commercial in nature, including without limitation, the creation, sale, and marketing of goods and services and tangible or intangible media, each that feature the Krikey Content, except that the sale, lease or lending of Krikey Content in exchange for a fee, on a separate standalone basis, is prohibited. The foregoing exclusion includes, without limitation, the sale of Krikey Content as merchandise or otherwise in a physical or digital form. For example, as limited by these Terms, the rights granted to you in this Section 7(e)(i) allow you post video clips of the Krikey Avatar on your social media and use the 3D Model part of the Krikey Content within your game or other content experience, but you cannot provide Krikey Content for purchase as an NFT or other digital product. To the extent permissible by applicable law, we may use any Krikey Content, including Service Animations and Service Tracks created from User Inputs, for training an artificial intelligence model.

1. You may engage in Commercial Use of the Krikey Content until the amount of Accrued Revenue reaches one hundred thousand dollars (\$100,000 (USD)) the (“Revenue Maximum”). Within ten (10) days of reaching the Revenue Maximum you must contact Krikey at support@krikey.com to request its commercial license agreement and agree to the same in order for you to continue Commercial Use of the Krikey Content. As used herein, “Accrued Revenue” means the total amount of revenue generated in connection with, or as a result of, your use or exploitation of the Krikey Content, starting from the date of your first Commercial

Use of the Krikey Content. Upon reaching the Revenue Maximum you will cease all Commercial Use of the Krikey Content and any Commercial Use of the Krikey Content beyond the Revenue Maximum will be deemed a material breach of these Terms.

2. Related Rights. You understand and agree that the limited license granted to you in 7(d)(i) does not authorize you to remove, alter or obscure any digital watermarks, any coding or proprietary rights notices incorporated on or accompanying the Krikey Content. To the extent that you own or control (presently or in the future) any intellectual property rights that may be necessary for Krikey to exercise of any ownership rights in the Krikey Content ("Related Rights"), you agree to and do hereby grant to Krikey, or will cause to be granted to Krikey, a worldwide, perpetual, irrevocable, non-exclusive, royalty-free and fully-paid up, assignable, sublicensable right and license to use, reproduce, modify, distribute, prepare derivative works of, perform publicly, display publicly and otherwise exploit any such Related Rights to the extent necessary to enable Krikey's exercise of any ownership rights in the Krikey Content.
2. General Prohibitions. You agree not to do any of the following:
 1. Submit any User Input or otherwise use the Services to generate any Krikey Content that: (i) infringes, misappropriates or violates a third party's intellectual property rights or rights of publicity or privacy; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or, if your Service Animation or Service Track is based on a Partner Avatar, the terms of the partner's platform; (iii) is fraudulent, false, misleading or deceptive; (iv) exploits or harms minors in any way or attempt to do so; (v) is defamatory, obscene, pornographic, vulgar or offensive; (vi) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; or (vii) promotes illegal or harmful activities or substances.
 2. Use, display, mirror or frame the Services or any individual element within the Services, Krikey's name, any Krikey trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Krikey's express written consent;
 3. Access, tamper with, or use non-public areas of the Services, Krikey's computer systems, or the technical delivery systems of Krikey's providers;
 4. Attempt to probe, scan or test the vulnerability of any Krikey system or network or breach any security or authentication measures;
 5. Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Krikey or any

of Krikey's providers or any other third party (including another user) to protect the Services;

6. Attempt to access or search the Services or download content from the Services using any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Krikey or other generally available third-party web browsers;
 7. Use the Services, or any portion thereof, for any commercial purpose or for the benefit of any third party or in any manner not permitted by these Terms;
 8. Attempt to decipher, decompile, disassemble, reverse engineer, engage in model extraction or stealing attacks or otherwise attempt to discover the source code or underlying components of models, algorithms, and systems of any of the software used to provide the Services (except to the extent such restrictions are contrary to applicable law or the licenses applicable to the open source software components that are incorporated into the Services);
 9. Upload any User Content to the Services to which you do not have the rights, permissions and consents, or have not provided the requisite notices, that are necessary for Krikey to process such User Content to provide the Services;
 10. Use any part of the Services or Krikey Content for training a machine learning or artificial intelligence model, regardless of commercial, testing, validation, evaluation, academic or research purpose;
 11. Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Services;
 12. Impersonate or misrepresent your affiliation with any person or entity;
 13. Violate any applicable law or regulation; or
 14. Encourage or enable any other individual to do any of the foregoing.
- 3.

Krikey is not obligated to monitor access to or use of the Services or to review or edit any content. However, we have the right to do so for the purpose of operating the Services, to ensure compliance with these Terms and to comply with applicable law or other legal requirements. We reserve the right, but are not obligated, to remove or disable access to any content, including User Content, at any time and without notice, including, but not limited to, if we, at our sole discretion, consider it objectionable or in violation of these Terms. We have the right to investigate violations of these Terms or conduct that affects the Services. We may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

Feedback. We appreciate feedback, comments, ideas, proposals and suggestions for improvements to the Services ("Feedback"). If you choose to submit Feedback, you agree that we are free to use it without any restriction or compensation to you.

4. Termination.

1. Termination. We may suspend or terminate your access to and use of the Services, including suspending access to or terminating your account, at our sole discretion, at any time and without notice to you. Reasons for termination of your account include failure to make timely payment of fees when charged and our determination that you are in breach of these Terms. Without limiting Section 6, you may cancel your account at any time by sending us an email at support@krikey.com.
2. Effect of Termination. Upon the expiration or termination of these Terms, the rights and licenses granted hereunder will automatically terminate, and the Services will no longer be provided to you by Krikey, and all User Content in Krikey's possession and control via the Services will be made available to you for download for up to thirty (30) days. After this time, any User Content on the Services will be deleted and may not be able to be recovered. Krikey will not be liable for any costs, losses, or damages arising out of or related to Krikey's exercise of its termination rights under these Terms. Upon any termination, discontinuation or cancellation of the Services or your account, the following Sections will survive: this section on the Effect of Termination, Fees and Payment (for payments due and owing to Krikey prior to the termination), User Content, Permissions to Your User Content, Krikey Content, Related Rights, General Prohibitions, Feedback, Warranty Disclaimers, Indemnity, Limitation of Liability, Governing Law and Forum Choice, Dispute Resolution, General Terms, Additional Terms Regarding Third Party Licenses, and the meaning of any defined terms.
5. Warranty Disclaimers. THE SERVICES AND ANY KRIKEY CONTENT ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, WE EXPLICITLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. We make no warranty that the Services or any Krikey Content will meet your requirements or be available on an uninterrupted, secure, or error-free basis. We make no warranty regarding the quality, accuracy, timeliness, truthfulness, completeness or reliability of any information or content on the Services.
6. Indemnity. You agree to release, indemnify and hold Krikey and its officers, directors, employees and agents, harmless from and against any claims, disputes, demands, liabilities, damages, losses, and costs and expenses,

including, without limitation, reasonable legal and accounting fees arising out of or in any way connected with (a) your access to or use of the Services and any Krikey Content, (b) your User Content, or (c) your violation of these Terms.

7. Limitation of Liability.

1. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER KRIKEY NOR ITS SERVICE PROVIDERS INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES AND ANY KRIKEY CONTENT WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST SAVINGS, LOST BUSINESS OPPORTUNITY, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT KRIKEY OR ITS SERVICE PROVIDERS HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.
 2. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL KRIKEY'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES EXCEED THE AMOUNTS YOU HAVE PAID OR ARE PAYABLE BY YOU TO KRIKEY FOR USE OF THE SERVICES OR ONE HUNDRED DOLLARS (\$100), IF YOU HAVE NOT HAD ANY PAYMENT OBLIGATIONS TO KRIKEY, AS APPLICABLE.
 3. THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN KRIKEY AND YOU.
8. Governing Law and Forum Choice. These Terms and any action related thereto will be governed by the Federal Arbitration Act, federal arbitration law, and the laws of the State of California, without regard to its conflict of laws provisions. Except as otherwise expressly set forth in Section 15 "Dispute Resolution," the exclusive jurisdiction for all Disputes (defined below) that you and Krikey are not required to arbitrate will be the state and federal courts located in the County of San Mateo, California and you and Krikey each waive any objection to jurisdiction and venue in such courts.
9. Dispute Resolution.
1. Mandatory Arbitration of Disputes. We each agree that any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or

the use of the Services (collectively, “Disputes”) will be resolved solely by binding, individual arbitration and not in a class, representative or consolidated action or proceeding. You and Krikey agree that the U.S. Federal Arbitration Act governs the interpretation and enforcement of these Terms, and that you and Krikey are each waiving the right to a trial by jury or to participate in a class action. This arbitration provision shall survive termination of these Terms.

2. Exceptions. As limited exceptions to Section 15(a) above: (i) we both may seek to resolve a Dispute in small claims court if it qualifies; and (ii) we each retain the right to seek injunctive or other equitable relief from a court to prevent (or enjoin) the infringement or misappropriation of our intellectual property rights.
3. Conducting Arbitration and Arbitration Rules. The arbitration will be conducted by the American Arbitration Association (“AAA”) under its Consumer Arbitration Rules (the “AAA Rules”) then in effect, except as modified by these Terms. The AAA Rules are available at www.adr.org or by calling 1-800-778-7879. A party who wishes to start arbitration must submit a written Demand for Arbitration to AAA and give notice to the other party as specified in the AAA Rules. The AAA provides a form Demand for Arbitration at www.adr.org.

Any arbitration hearings will take place in the county (or parish) where you live, unless we both agree to a different location. The parties agree that the arbitrator shall have exclusive authority to decide all issues relating to the interpretation, applicability, enforceability and scope of this arbitration agreement.

1. Arbitration Costs. Payment of all filing, administration and arbitrator fees will be governed by the AAA Rules, and we won’t seek to recover the administration and arbitrator fees we are responsible for paying, unless the arbitrator finds your Dispute frivolous. If we prevail in arbitration we’ll pay all of our attorneys’ fees and costs and won’t seek to recover them from you. If you prevail in arbitration you will be entitled to an award of attorneys’ fees and expenses to the extent provided under applicable law.
2. Injunctive and Declaratory Relief. Except as provided in Section 15(b) above, the arbitrator shall determine all issues of liability on the merits of any claim asserted by either party and may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party’s individual claim. To the extent that you or we prevail on a claim and seek public injunctive relief (that is, injunctive relief that has the primary purpose and effect of prohibiting unlawful acts that threaten

future injury to the public), the entitlement to and extent of such relief must be litigated in a civil court of competent jurisdiction and not in arbitration. The parties agree that litigation of any issues of public injunctive relief shall be stayed pending the outcome of the merits of any individual claims in arbitration.

3. Class Action Waiver. YOU AND KRIKEY AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, if the parties' Dispute is resolved through arbitration, the arbitrator may not consolidate another person's claims with your claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this Dispute Resolution section shall be null and void.
 4. Severability. With the exception of any of the provisions in Section 15(f) of these Terms ("Class Action Waiver"), if an arbitrator or court of competent jurisdiction decides that any part of these Terms is invalid or unenforceable, the other parts of these Terms will still apply.
2. General Terms.
1. Reservation of Rights. Except as expressly stated herein, Krikey and its licensors exclusively own all right, title and interest in and to the Services, including all associated intellectual property rights. You acknowledge that the Services are protected by copyright, trademark, and other laws of the United States and foreign countries. You agree not to remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services.
 2. Entire Agreement. These Terms constitute the entire and exclusive understanding and agreement between Krikey and you regarding the Services, and these Terms supersede and replace all prior oral or written understandings or agreements between Krikey and you regarding the Services. If any provision of these Terms is held invalid or unenforceable by an arbitrator or a court of competent jurisdiction, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect. Except where provided by applicable law in your jurisdiction, you may not assign or transfer these Terms, by operation of law or otherwise, without Krikey's prior written consent. Any attempt by you to assign or transfer these Terms absent our consent or your statutory right, without such consent, will be null and void. Krikey may freely assign or transfer these Terms without restriction. Subject to the foregoing, these

Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

3. Notices. Any notices or other communications provided by Krikey under these Terms will be given: (i) via email; or (ii) by posting to the Services. For notices made by email, the date of receipt will be deemed the date on which such notice is transmitted.
4. Waiver of Rights. Krikey's failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Krikey. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.
3. Acknowledgment of Beta Services. You acknowledge and agree that: (a) the Services may not operate properly, be in final form or be fully functional; (b) the Services may contain errors, design flaws or other problems; (c) it may not be possible to make the Services fully functional; (d) the information obtained using the Services may not be accurate; (e) use of the Services may result in unexpected results, loss of data or communications, project delays or other unpredictable damage or loss; (f) Krikey is under no obligation to release any updates to, or to support or otherwise maintain, the Services; and (g) Krikey has the right to unilaterally to abandon development of the Services, at any time and without any obligation or liability to you including with respect to any User Content or otherwise.
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5. Contact Information. If you have any questions about these Terms or the Services, please contact Krikey at Krikey, Inc., 3000 Sand Hill Road, 4-120, Menlo Park, CA 94025, (650) 257-0835, or support@krikey.com.