

ColorTokens Xcloud

Terms of Service

BY ACCEPTING THESE XCLOUD TERMS OF SERVICE (“**TERMS**” OR “**AGREEMENT**”) DURING YOUR ACCOUNT REGISTRATION OR SUBSCRIPTION PROCESS, OR BY ACCESSING OR USING OUR OFFERINGS, YOU CONFIRM YOUR ACCEPTANCE OF THESE XCLOUD TERMS OF SERVICE AND OTHER APPLICABLE TERMS AND YOUR AGREEMENT TO BE A PARTY TO THIS BINDING CONTRACT. **COLORTOKENS** (ALSO DEFINED AS “**COMPANY**”) AND YOU ARE ALSO COLLECTIVELY REFERRED TO AS THE “**PARTIES**” AND INDIVIDUALLY AS A “**PARTY**”.

YOU AGREE TO THESE TERMS ON BEHALF OF THE COMPANY; OR OTHER LEGAL ENTITY FOR WHICH YOU ARE ACTING (“**CUSTOMER**”); IF THERE IS NO COMPANY OR LEGAL ENTITY THEN ON BEHALF OF YOURSELF AS AN INDIVIDUAL (IN EITHER CASE, “**YOU**” or “**YOUR**”). YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY AND CAPACITY TO ACT ON BEHALF OF AND BIND SUCH ENTITY (IF ANY) AND YOURSELF. IF YOU DO NOT AGREE, YOU DO NOT HAVE THE RIGHT TO ACCESS OR USE OUR OFFERINGS.

DEFINITIONS

1. “**Advanced User**” means the user who has accepted the Xcloud Terms of Service and additionally has purchased Advanced Membership of ColorTokens Service.
2. “**ColorTokens Service(s)**” or “**Service(s)**” means ColorTokens’ proprietary cloud service, as identified in this Agreement, and as modified from time to time. The Service is made available for End Users via ColorTokens hosted SaaS cloud platform on Subscription basis, use of which is enabled by accepting this Xcloud Terms of Service.
3. “**Customer Content**” means any information, data, content, and materials that Customer or any of its End Users upload to transmit through, process using, or store on cloud platform providing the ColorTokens Service.
4. “**End User(s)**” Standard User and Advanced User are collectively defined as End Users.
5. “**Standard User**” means the user who has accepted the Xcloud Terms of Service and has opted the standard Subscription to use the ColorTokens Service.
6. “**Subscription Notification**” notification sent to End User’s registered email when they buy Subscription to ColorTokens Service.
7. “**Subscription**” means End User’s Subscription to use the ColorTokens Service as per the provisions of this Agreement.
8. “**Supported Marketplace**” means the cloud-based marketplace where Subscription to ColorTokens Service is available for purchase.
9. “**Subscription Period**” – means the period for which ColorTokens Service is subscribed as per the provisions of this Agreement.
10. “**Term**” means the term of this Agreement as set forth in Term and Termination Section.

COLORTOKENS SERVICE

1. Right to Use. Subject to the terms and conditions of this Agreement, Company will make available to its End Users, on a Subscription basis, the ColorTokens Service during the applicable Subscription Period, solely for Customer's own internal business operations. Company hereby grants to Customer a nonexclusive, revocable, nontransferable, non-sublicensable Subscription during the applicable Subscription Period. ColorTokens may, in its sole discretion, discontinue the Services or modify the features of the Subscriptions from time to time without prior notice.
2. Usage Restrictions. Without limiting any other provision of this Agreement, Customer will not (and will not permit any End User or third party to) without explicit and written (signed) permission from the Company: (a) access or use the ColorTokens Service or any portion thereof for any purpose or in any manner other than as expressly accepted under this Agreement; (b) attempt or purport to sell, lease, sublicense, assign, or transfer access to the ColorTokens Service or any portion thereof to any third party, other than providing access to End Users as expressly permitted under this Agreement; (c) extract ideas, algorithms, procedures, workflows or hierarchies from the ColorTokens Service or any portion thereof, or otherwise attempt to reverse engineer the ColorTokens software or any portion thereof, or use the ColorTokens Service or any portion thereof for the purpose of creating another product or service; (d) provide any means of access to, or otherwise display or transmit, the ColorTokens Service from or through any website (including by "framing" or "mirroring") other than the website provided by Company for such purposes; (e) remove any disclaimer, copyright, trademark, confidentiality, or other legal notice from the ColorTokens Service or any portion thereof (or any associated documentation or materials); (f) upload to, transmit through, process using, or store on the platform providing the ColorTokens Service (f)(i) any information, data, content, and materials that would infringe, misappropriate, or violate any third party's rights, or (f)(ii) any virus, worm, trojan horse, time bomb, spyware, malware or other harmful or potentially harmful codes (g) use the ColorTokens Service for benchmarking or comparative or competitive analyses; (h) use the ColorTokens Service or any portion thereof for any fraudulent or unlawful purpose or in any manner that would violate the legal rights of any third party; and (i) interfere with or disrupt the ColorTokens Service or the servers, software or networks used to make the ColorTokens Service available. Company will have the unrestricted right, but not the obligation, to monitor Customer's and End Users' use of the ColorTokens Service and all portions thereof. Customer will, and will cause each End User to, use the ColorTokens Service and all portions thereof in accordance with all applicable laws, rules, and regulations. If Customer uses the ColorTokens Service in conjunction with third party products, it is responsible for complying with the third-party providers' terms and conditions and privacy policies, and all such use is at Customer's own risk. The Customer's use, rights, and obligations in respect of third-party product/software is governed by its applicable end user license agreement. Company does not provide guarantee or support ongoing integration for products that are not a native part of the ColorTokens Service.
3. Your Responsibilities. This Agreement shall exclusively govern the purchase and provision of the Services, and shall prevail over any conflicting, amending and/or additional terms contained in any form of conversations, which are hereby rejected and shall be null and void.
4. Upgrade to Advanced. All Standard User(s) have an option to upgrade their Subscription to Advanced User ("**Advanced Membership**"). Few additional clauses will be applicable

only for Advanced Users and is not applicable for standard users. Sections 3.6 (Taxes), Section 3.7 (Change in Fee and Services) and Section 7.2 (Indemnity by ColorTokens) mentioned in this Agreement are such additional clauses which are applicable only for Advanced Users.

5. Access Credentials. The ColorTokens Service provides the ability to End User to create user IDs and passwords to manage access to the Service (“**Access Credentials**”). ColorTokens will provide Access Credentials only to End Users and will require all End Users to protect their Access Credentials from unauthorized use or disclosure. Customer will be responsible for all activities of its End Users in connection with the ColorTokens Service using any Access Credentials issued to Customer or any of its End Users.
6. Customer Content. Company may use the Customer Content in connection with providing the ColorTokens Service to Customer under this Agreement (and Customer hereby grants Company the right to use the Customer Content for such purposes). Customer grants ColorTokens the non-exclusive, worldwide right to use, copy, store, transmit and display Customer Content and to modify and create derivative works of Customer Content (for reformatting or other technical purposes), but only as necessary to provide the Service, support and any technical services to Customer under this Agreement. Customer represents and warrants that: (a) Customer possesses and will obtain and maintain all necessary rights, consents and licenses to use of the Customer Content as contemplated by this Agreement in compliance with all applicable contractual obligations, laws, rules, and regulations; and (b) the use of the Customer Content as contemplated by this Agreement does not and will not infringe, misappropriate or otherwise violate any copyright, trade secret, patent, or other intellectual property, privacy, or proprietary rights of any third party. ColorTokens is not liable for any usage (import/storage/transfer/processing) of such extracted or exported data by Customer or authorized channel partners.
7. System Requirements. Use of the ColorTokens Service requires one or more compatible devices, Internet access, and certain software, and may require obtaining updates or upgrades from time to time. As use of the Services involves hardware, software, and Internet access, Your ability to access and use the ColorTokens Service may be affected by the performance of these factors. Notwithstanding anything to the contrary, Company will have no liability with respect to any failure or interruption that is due to the Customer Infrastructure or Customer’s failure to provide adequate Customer Infrastructure, or for any security breach, loss of data, or similar event related to the Customer Infrastructure.
8. Beta Services and Future Developments. ColorTokens may, from time to time, offer access to services that are classified as “**Beta version**” or may change features and specifications of the Service. ColorTokens makes no representations that a Beta version will ever be made generally available and reserves the right to discontinue or modify a Beta version at any time without notice. Beta versions are provided AS IS, may contain bugs, errors or other defects, and Your use of a Beta version is at Your sole risk.

SUPPORT, SUBSCRIPTION AND FEE

1. Support Modes. Company may offer different modes of support from time to time. Examples may include online chat, application chat, email support. Modes of support may differ depending on Your Offering. Additional terms may apply to these modes of support, including but not limited to conditions relating to technical requirements. Not all modes of

support will be available in every region or every language. During the Subscription Term, Company will provide Support in accordance with the Support Policy.

2. Support on Subscription Offerings. ColorTokens provides support to all End User for their use of ColorTokens Service and ColorTokens is solely responsible to decide the priority of support requests. Advanced Users will enjoy priority support from ColorTokens.
3. Length of subscription. Your Subscription to an ColorTokens Service will be for a fixed term of limited length, the length of which should be indicated at the time of purchase and should be reflected on Your Subscription Notification. If no length is indicated, please contact us at xcloud@colortokens.com and we will determine and confirm the length of Your Subscription Term.
4. Additional Terms. Customer agrees to that there may be additional terms of the Supported Marketplace in place and that the Customer needs to accept to access ColorTokens Service.
5. Renewal of subscription. At the end of Your Subscription period for Advanced Membership, Your Subscription will automatically renew for the same period as the previous Subscription term, unless You opt for Subscription cancellation.
6. Taxes. Prices quoted are exclusive of all taxes. Each Party is responsible for its own taxes relating to transactions under this Agreement and shall report and pay any relevant taxes to the respective tax authorities. Customer shall pay, and shall be liable for, all taxes relating to ColorTokens' provision of the ColorTokens' Service which ColorTokens is required to collect from Customer. ColorTokens shall pay, and shall be liable for, taxes based on its net income or capital.
7. Change in Fee and Services. ColorTokens reserves the right to change the fees for the Subscription at any time. in effect on renewal of your Subscription, to reflect factors such as changes to our product offerings, changes to our business, or changes in economic conditions. ColorTokens shall use commercially reasonable efforts to provide Customer with prior notice of any change, but such changes shall not require Customer's consent.

OWNERSHIP

1. Subject only to the rights expressly granted under this Agreement , as between the parties, (a) Company exclusively owns and retains all right, title and interest (including all intellectual property rights) in and to the ColorTokens Software and Service including but not limited to all underlying technologies and associated documentations and all portions thereof; and (b) Customer exclusively owns and retains all right, title and interest limited to all pre-existing intellectual property rights.
2. Use of Marks. Customer agrees that ColorTokens can use Customer's name and logo on its website, sales presentations, and in its marketing materials and to participate in ColorTokens reference program as requested by ColorTokens from time to time.

CONFIDENTIALITY

1. Disclosure and Use. **"Confidential Information"** shall mean the proprietary, Confidential, or trade secret information or know-how disclosed by either Party or its affiliates (**"Disclosing Party"**) to the other Party (**"Receiving Party"**). Either Party will maintain the confidentiality of the Confidential Information of Disclosing Party and use at least the same efforts to prevent the unauthorized disclosure and use of such information that it uses

to protect its own similar Confidential Information. Either Party will not disclose the Confidential Information of the Disclosing Party to anyone other than to those of its employees and contractors who need to know such Confidential Information in connection with Either Party's activities under this Agreement and who are subject to confidentiality obligations at least as stringent as those set forth in this Agreement. Either Party will use the confidential information of Disclosing Party only to perform its obligations or exercise its rights under this Agreement. The foregoing restrictions on disclosure and use will survive post three (3) years from the termination or expiration of this Agreement.

2. Privacy Policy. Personal information included in the Customer Content will be dealt in accordance with Company's privacy policy which may be updated from time to time and published at ColorTokens website [here](#).

FEEDBACK

1. You may choose to or we may invite you to submit comments or Ideas about the Service including without limitation about how to improve the Service or our products ("**Idea(s)**"). By submitting any Idea, you agree that your disclosure is gratuitous, unsolicited and without restriction and will not place ColorTokens under any fiduciary or other obligation, and that we are free to use the Idea without any additional compensation to you, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, ColorTokens does not waive any rights to use similar or related ideas previously known to ColorTokens, or developed by its employees, or obtained from sources other than you.

INDEMNIFICATION

1. Indemnification. Customer agrees to defend, indemnify and hold harmless ColorTokens and its employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including without limitation attorneys' fees) arising out of or related to: (i) Customer's and End Users' use of and access to the Service; (ii) Customer's or an End User's violation of any Term of this Agreement (including any additional or special Terms or any other applicable terms); (iii) Customer's or an End User's violation of any third-party right, including without limitation any right of privacy, publicity rights or intellectual property rights; (iv) Customer's or an End User's violation of any law, rule or regulation; (e) any claim or damages that arise as a result of any Customer Content; or (v) any other party's access and use of the Service with provided Access Credentials; and (vi) Your (including Your End Users') use of Services, including any output or other results produced by such use.
2. Indemnity by ColorTokens. Provided that Customer abides by the obligations set forth in section 2.2 (Usage Restrictions), ColorTokens will defend Customer from and against any third-party claim to the extent that the Service, when used by Customer as authorized in this Agreement, infringes a third party's patent, copyright, trademark or trade secret, and will indemnify and hold harmless Customer against any damages or costs awarded in a competent court of jurisdiction against Customer (including reasonable attorneys' fees) or agreed in settlement by ColorTokens resulting from the claim.

3. Procedure. The indemnifying party's obligations in this Section 7 are subject to receiving (a) prompt notice of the claim, (b) the exclusive right to control and direct the investigation, defence and settlement of the claim and (c) all reasonably necessary cooperation of the indemnified party, at the indemnifying party's expense for reasonable out-of-pocket costs. The indemnifying party may not settle any claim without the indemnified party's prior consent if settlement would require the indemnified party to admit fault or take or refrain from taking any action (other than relating to use of the Service, when ColorTokens is the indemnifying party). The indemnified party may participate in a claim with its own counsel at its own expense.

LIMITATION OF LIABILITY AND DISCLAIMER

1. EXCEPT FOR BREACH BY EITHER PARTY OF SECTION 5 (CONFIDENTIALITY), LIABILITY UNDER SECTION 7 (INDEMNIFICATION), OR BREACH BY CUSTOMER OF SECTION 2 (COLORTOKENS SERVICE), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING BUSINESS INTERRUPTION OR LOSS OF INCOME, DATA, PROFITS, OR REVENUE, UNDER ANY THEORY OF LIABILITY AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE MAXIMUM LIABILITY OF COMPANY UNDER THIS AGREEMENT WITH RESPECT TO ANY CLAIM WILL BE LIMITED TO THE HIGHER OF (i) THE AMOUNT OF FEES PAID TO COMPANY BY CUSTOMER OR AUTHORIZED USER FOR THE ADVANCED MEMBERSHIP IN THE PRECEDING TWELVE (12) MONTHS OR; (ii) \$20 (TWENTY DOLLARS) PRECEDING THE INCIDENT GIVING RISE TO THE APPLICABLE CLAIM. IN ADDITION, NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, COMPANY WILL HAVE NO LIABILITY FOR ANY DAMAGE CAUSED BY ANY EXCLUDED CLAIMS.
2. Disclaimer. COLORTOKENS SERVICE IS PROVIDED "AS IS" AND COMPANY MAKES NO (AND HEREBY DISCLAIMS ALL) REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITATION OF THE FOREGOING, COMPANY DOES NOT REPRESENT OR WARRANT THAT ACCESS TO THE COLORTOKENS SERVICE, WILL BE UNINTERRUPTED, ERROR-FREE OR SECURE OR THAT ANY DATA WILL NOT BE SUBJECT TO DAMAGE, CORRUPTION, DESTRUCTION, LOSS OR DELETION. FURTHER, HOWEVER ARISING, COLORTOKENS WILL IN NO EVENT BE LIABLE TO CUSTOMER, END USER OR ANY THIRD PARTY FOR: DAMAGES BASED ON USE OR ACCESS, INTERRUPTION, DELAY OR INABILITY TO USE THE COLORTOKENS SERVICE, LOSS OF SOLUTIONS, LOSS OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM FAILURE, MALFUNCTION OR SHUTDOWN, SYSTEM OUTAGE FROM CLOUD SERVICE PROVIDERS, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT

INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION, BREACHES BY AN AUTHORIZED PARTNER, OR ANY CYBER SECURITY BREACHES IN CUSTOMER, END USER OR ANY OTHER THIRD PARTY SYSTEM.

TERMINATION

1. Termination for Default. Company may terminate this Service effective immediately upon written notice to End User if ColorTokens believes that End User, is in violation of any terms of this Agreement.
2. Effect of Termination. Upon expiration or termination of this Agreement, End Users' right to access and use the ColorTokens Service will immediately terminate, and End Users will immediately cease all use of ColorTokens Service. Customer Content and other Confidential Information may be retained in the Receiving Party's standard backups after deletion but will remain subject to this Agreement's confidentiality restrictions. Company shall have no obligation to maintain or provide any Customer Content and shall thereafter, unless legally prohibited, delete in such a manner as prevents recovery through normal/laboratory means, all Customer Content in its systems or otherwise in its possession or under its control.
3. Survival. The following Sections will survive any expiration or termination of this Agreement : 1 (Definitions), 2.2 (Usage Restrictions), 4 (Ownership), 5. (Confidentiality), 7 (Indemnification), 8 (Limitation of Liability and Disclaimer), 9 (Termination) and 10 (General).

GENERAL

1. Governing Law. This Agreement will be governed by the laws of State of California without reference to its conflicts of laws or provisions or state arbitration statutes.
2. Severability. In case any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
3. Relationship of the Parties. A Party is not by virtue of this Agreement the employee, agent or partner of the other Party and is not authorized to bind or represent the other Party.
4. Force Majeure. Neither party will be liable under this Agreement by reason of any failure or delay in the performance of its obligations hereunder (except for the payment obligations) on account of events beyond the reasonable control of such party, which may include without limitation any cyber breach incident (denial-of- service, attacks), epidemics, pandemics, strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes and material shortages (each a **"Force Majeure Event"**). Upon the occurrence of a Force Majeure Event, the non-performing party will be excused from any further performance of its obligations (except payment obligations) affected by the Force Majeure Event for so long as the event continues, and such party continues to use commercially reasonable efforts to resume performance and notifies the other party of such event.

5. Entire agreement. This Agreement, including any ancillary documents, constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, and agreements, whether oral or written, and all communications between the parties relating to the subject matter of this Agreement and all past courses of dealing or industry custom. No amendment or modification of any provision of this Agreement will be effective unless in writing and signed by a duly authorized signatory of Customer and Company referring explicitly to the provision amended or modified.
6. Notices. All notices required or permitted under this Agreement will be in writing and delivered in person or via email, by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested, and in each instance will be deemed given upon receipt. For the Company, all notices will be sent to the addresses mentioned below, unless otherwise mentioned in the applicable Order.