

# ICreative Cloud Service Terms



These ICreative Cloud Services Terms apply to Cloud Services and related Professional Services. Ordered services, related fees and other commercial terms are specified in a separate sales agreement, order form or similar document signed by ICreative and Customer ("Sales Agreement"). These General Terms together with the Sales Agreement and other appendices thereto (as listed in the Sales Agreement), constitute the agreement between ICreative and Customer ("Agreement").

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## 1. Cloud Services

- 1.1. Right to Use. ICreative grants Customer and its Affiliates right to access and use Cloud Services, subject to payment of applicable fees and terms of the Agreement. Customer is liable for its Affiliates' access and use of Cloud Services.
- 1.2. Acceptable Use. Customer shall not i) make available Cloud Services to any third party, ii) use Cloud Services to send or store harmful, infringing or unlawful material, iii) interfere with or disrupt the integrity or performance of Cloud Services (including data contained therein), or iv) attempt to gain or permit unauthorized access to Cloud Services or related systems or networks.
- 1.3. Accounts. Customer is liable for all activity occurring under its user accounts. Customer shall maintain confidentiality of any non-public authentication credentials associated with its use of Cloud Services and promptly notify ICreative of any known or suspected security incidents or misuse of its accounts or authentication credentials.
- 1.4. Customer Data. ICreative and its Subcontractors may use Customer Data to provide Cloud Services in accordance with the Agreement. ICreative and its Subcontractors may also use Customer Data (excluding Personal Data) to develop, analyse and market its Cloud Services, subject to such Customer Data being anonymized to the extent necessary for ICreative and its Subcontractors to comply with its confidentiality obligations. Customer is responsible for Customer Data and its content, and shall secure and maintain all rights and authorizations in Customer Data (including Personal Data) necessary for ICreative to provide Cloud Services without violating laws or rights of any third party. Customer owns all rights in and to all Customer Data.
- 1.5. Customer's Other Responsibilities. Customer shall i) evaluate suitability of Cloud Services for its business and needs, ii) comply with all laws and regulations applicable to it and its use of Cloud Services, iii) provide ICreative with all cooperation and access to such relevant and up-to-date information and data (including Customer Data) necessary for providing Cloud Services and performing Professional Services, and iv) ensure its networks and systems comply with Technical Requirements.
- 1.6. Cloud Service Changes. ICreative and its Subcontractors may make reasonable changes to Cloud Services from time to time, as long as any such change does not adversely impact the functionality or usability of Cloud Services for the Customer. Subject to the foregoing, ICreative shall inform Customer of substantial changes to Cloud Services.
- 1.7. Subcontractors. ICreative may involve Subcontractors to the extent such appointment does not lead to non-compliance with any applicable laws or ICreative's obligations under the Agreement. ICreative is free to choose and change Subcontractors and shall be liable for their work. Upon request, ICreative shall inform Customer of the Subcontractors used. In case there is a change of Subcontractor which is in direct interaction with the Customer, ICreative shall notify Customer of such change.
- 1.8. Third Party Services. Third party service means any separate product or service provided by a third party through or in connection with Cloud Services ("Third Party Service"). If Customer subscribes to a Third Party Service, separate third party terms may apply. ICreative may also contact and share any relevant information with such third parties to the extent necessary to enable them to provide their services to Customer.

## 2. Professional Services

- 2.1. Cloud Service Activation. To prepare the activation of Cloud Services, ICreative may perform certain Professional Services. Professional Services are specified in more detail in the Sales Agreement or in SOW (if applicable).
- 2.2. Testing and Defects. ICreative shall test results of Professional Services in accordance with its standard practices. Customer is responsible for functional testing of results. Defects in results of Professional Services which do

not substantially interfere with the use of Cloud Services in accordance with Service Documentation may not preclude acceptance of the results.

- 2.3. Acceptance. Results of Professional Services are deemed accepted if Customer i) accepts the results in writing, ii) does not present ICreative with a written complaint describing defects which preclude acceptance within 15 days from the date of completion, or iii) takes Cloud Services into production use.
- 2.4. Time Schedules. ICreative shall use reasonable efforts to meet time schedules specified in the Sales Agreement or SOW. ICreative is not responsible for any delays due to reasons which are not solely attributable to ICreative.

## 3. Fees and Taxes

- 3.1. Fees. ICreative charges Cloud Services and Professional Services based on fees and invoicing terms specified in Sales Agreement. Customer shall pay all fees to ICreative without any set-off, counterclaim, deduction or withholding.
- 3.2. Taxes. Fees imposed under the Agreement are exclusive of all taxes, levies, and duties. Customer is responsible for all taxes other than ICreative income and payroll taxes. If any deduction or withholding is required by law, ICreative shall pay the taxes and add the amount to the fees invoiced to and paid by the Customer, so that the net amount ICreative receives remains unchanged, unless Customer provides ICreative with a valid tax exemption certificate.
- 3.3. ICreative may assign delayed payments to a third party for collection and charge the incurred expenses to the Customer.
- 3.4. Disputes. Customer may dispute an invoice in good faith by providing ICreative a written notice within 30 days from the invoice date or otherwise such dispute is waived. Customer shall pay the undisputed portion of the invoice by the due date.

## 4. Personal Data

- 4.1. Compliance. Each party shall comply with mandatory data protection laws applicable to it in the context of Cloud Services provided under the Agreement.
- 4.2. Data Processing. With regard to Personal Data, Customer is the data controller and ICreative and/or its Subcontractor is the data processor. ICreative and/or its Subcontractor shall process Personal Data only on behalf of Customer as is necessary for ICreative to perform the Agreement and in accordance with Customer's instructions, which Customer confirms are exhaustively set out in the Agreement.
- 4.3. Data Transfer. To provide Cloud Services, Customer accepts that ICreative may have Personal Data processed and accessible by its Subcontractors outside Customer's country of domicile. In case the Customer is based within the European Economic Area ("EEA") and Personal Data is transferred to a Subcontractor in non-EEA country, which does not ensure adequate level of data protection according to applicable law, ICreative guarantees adequate level of data protection by agreeing with the Subcontractor appropriate contractual clauses. Customer is responsible for obtaining consents of Personal Data subjects to the extent necessary for the transfer.
- 4.4. Security. Each party shall establish and maintain appropriate technical and organizational security measures designed to protect the security and integrity of Personal Data. ICreative is ISO27001 certified and will audit its ISO27001 compliance annually. Upon Customer's request ICreative shall provide a copy of its ISO27001 certificate.
- 4.5. Security Incidents. To the extent permitted by law, ICreative will notify Customer of any unauthorized access to Personal Data of which ICreative becomes aware ("Security Incident"), and such notification shall not be construed as an acknowledgment by ICreative of any fault or liability with respect to the Security Incident. To the extent the Security Incident results from a breach of the Agreement, ICreative will use reasonable efforts to identify and remediate the cause of such Security Incident.

## 5. Confidentiality

- 5.1. Definition. "Confidential Information" means non-public information relating to discloser's business, disclosed in connection with, and prior to or during the term of, the Agreement. Confidential Information does not include any information that i) is or becomes publicly available without breach of this section 5, ii) was in recipient's possession before receipt from discloser, iii) was rightfully disclosed to recipient by a third party without restriction on disclosure, or iv) is independently developed by recipient without any use of the Confidential Information as can be shown by documentary evidence.
- 5.2. Use and Disclosure. Recipient agrees i) to use Confidential Information only in connection with the Agreement and hold Confidential Information in strict confidence, ii) to limit disclosure of Confidential Information only to its own, its Subcontractors' or Affiliates', directors, employees and advisors strictly on a need-to-know basis and who are bound by a written agreement or policies at least as protective of discloser's Confidential Information as terms of this section 5, and iii) to take all reasonable measures to avoid unauthorized disclosure or use of Confidential Information, including, at a minimum, those measures it takes to protect its own confidential information of a similar nature. Recipient may disclose Confidential Information to third parties to the extent required to comply with law or order of competent authority or court, provided that recipient gives discloser prior notice to the extent reasonably practicable and lawfully permitted.
- 5.3. Deletion. Upon discloser's written request or termination of the Agreement, recipient will cease using and destroy all items in its possession containing Confidential Information, subject to section 9.2 (Transition Period).

## 6. Warranty statements

- 6.1. Cloud Services. ICreative warrants that during the Agreement term i) it will comply with laws and regulations applicable to it in connection with the operation of its business as it relates to Cloud Services, and ii) Cloud Services are provided substantially in accordance with Service Documentation. Customer's exclusive remedy is correction of deficient Cloud Service, subject to promptly provided written notice describing the deficiency. If ICreative cannot substantially correct the deficiency in a commercially reasonable manner within a reasonable timeframe, Customer may terminate deficient Cloud Service and ICreative shall reimburse the corresponding proportion of any prepaid fees for the terminated Cloud Service. Such termination must occur within three months of ICreative's failure to correct the deficiency.
- 6.2. Professional Services. ICreative warrants, for a period of 30 days from the acceptance date, that results of Professional Services will substantially conform to the Sales Agreement or SOW. Warranty covers defects in results of Professional Services solely attributable to ICreative that prevent Cloud Services to function substantially in accordance with documentation. ICreative shall correct defects reported in writing during the warranty period as soon as reasonably possible.
- 6.3. Exclusions. Limited warranties provided in sections 6.1 and 6.2 do not apply if Customer is in material breach of the Agreement, and do not cover any deficiencies resulting from i) events beyond ICreative's reasonable control, ii) Customer's use of Cloud Services in a manner inconsistent with the Agreement or ICreative's written instructions or provided documentation, or iii) Customer's network, systems or non-compliance with Technical Requirements.
- 6.4. Disclaimer. Other than the limited warranties provided in sections 6.1 and 6.2, ICreative provides no warranties, whether express, implied, statutory, or otherwise, including warranties of merchantability or fitness for a particular purpose. These disclaimers will apply to the fullest extent permitted under applicable law.

## 7. IPR Indemnity

- 7.1. Defence. ICreative will defend Customer against any claims made by a third party that a Cloud Service used by the Customer in accordance with the Agreement infringes that third party's IPR.
- 7.2. Obligations. Customer must notify ICreative promptly of such claim, give ICreative sole control over the defence and settlement of the claim, and provide reasonable help in defending the claim. Subject to the foregoing, ICreative will i) indemnify Customer for reasonable out-of-pocket expenses that it incurs in giving that help, and ii) pay the amount of

any resulting settlement (agreed by ICreative) or final judgment.

- 7.3. Remedies. If ICreative reasonably believes that a claim under section 7.1 may bar Customer's use of Cloud Service, ICreative will either i) obtain the right to keep using the Cloud Service, or ii) modify or replace the Cloud Service with a functional equivalent. If these options are not commercially reasonable, ICreative may terminate Customer's right to use the infringing Cloud Service and reimburse the corresponding proportion of prepaid fees for the terminated Cloud Service.
- 7.4. Limitations. ICreative is not liable if the claim i) is asserted by a company which exercises control over the Customer or which is controlled by the Customer within the definition of control laid down in applicable legislation, or results from ii) alteration of the Cloud Service by the Customer, iii) ICreative's compliance with Customer's written instructions, iv) use of Cloud Service for a purpose for which it has not been designed or approved, v) use of Cloud Service in combination with any product or service not supplied or approved by ICreative, or vi) use of a version of Cloud Service which has been superseded by a similar version made available to Customer without additional charge.
- 7.5. Exclusive Remedy. This section 7 provides Customer's exclusive remedy for all IPR infringement claims and damages.

## 8. Limitation of Liability

- 8.1. Limitations. The aggregate liability of each party for all claims under the Agreement is limited to direct damages up to the total amount paid by the Customer for the Cloud Service that gave rise to liability during the 12-month period preceding the event giving rise to liability.
- 8.2. Exclusions. Neither party will be liable for any i) loss of revenue, profits (excluding fees under the Agreement), business, data use, goodwill, reputation or other economic advantage, or ii) indirect, special, incidental, consequential or punitive damages or interest, even if the party knew they were possible or reasonably foreseeable.
- 8.3. Claims. All claims under the Agreement must be made within 12 months from the event that gave rise to the claim.
- 8.4. Exceptions to Limitations. The limits of liability in this section 8 apply to the fullest extent permitted by applicable law.

## 9. Term, Termination and Suspension

- 9.1. Term and Termination. The Agreement enters into force on the effective date (specified in Sales Agreement) and remains in effect until all Cloud Services under the Agreement have or have been terminated. Either party may terminate the Agreement, wholly or partly, for cause by written notice i) if the other party fails to cure a material breach of the Agreement within 40 days after written notice of such breach, ii) in case of insolvency, bankruptcy or sale of all or majority of assets of a party, or iii) if a force majeure event specified in section 11.3 (Force Majeure) prevents a party from performing its obligations under the Agreement for more than three consecutive months.
- 9.2. Transition Period. Upon request, ICreative shall continue providing the Cloud Service for a transition period of no more than 90 days from the effective date of termination of the respective Cloud Service, subject to terms of the Agreement and continued payment of fees. Customer Data may be exported from Cloud Service during Cloud Service term and transition period, after which ICreative has no obligation to maintain or provide any Customer Data. Upon request, ICreative shall provide reasonable transition assistance to Customer subject to any applicable charges specified by ICreative.
- 9.3. Suspension. ICreative may temporarily suspend Customer's right to access and use any portion of Cloud Services if i) an undisputed invoice is more than 30 days overdue, ii) Customer's use of Cloud Services poses a security risk to Cloud Services or may harm ICreative or any third party systems used for providing Cloud Services, or iii) Customer otherwise materially breaches terms of the Agreement. Suspension will be limited to the corresponding part of the Cloud Services and will be in effect only while the circumstances giving rise to suspension exists. When reasonably practicable and lawfully permitted, ICreative will provide Customer with advance notice of any such suspension. Any suspension shall not excuse Customer from making payments under the Agreement. If Customer does not fully address the reasons for the suspension within 60 days after suspension, ICreative may terminate Customer's right to use the respective Cloud Services.

## 10. Applicable law and disputes

- 10.1. Law. The Agreement is governed by Dutch law. The applicability of the Vienna Sales Convention (CISG, 11 April 1980) is explicitly excluded.
- 10.2. Disputes. All disputes arising out of or in connection with the Agreement that cannot be settled by negotiations between the parties shall be finally settled by the competent court located in the Netherlands.

## 11. Miscellaneous

- 11.1. Assignment. Customer may not assign the Agreement in whole or in part without ICreative's written consent, which may not be unreasonably withheld. ICreative may assign the Agreement in whole or in part to its Affiliate or to a third party to which the relevant business operations concerning the Cloud Services are transferred. ICreative may also transfer its receivables under the Agreement to a third party.
- 11.2. Conflicts. In case of conflict, Sales Agreement terms prevail over these General Terms and other appendices which are listed and apply in their numbering order specified in Sales Agreement.
- 11.3. Force Majeure. A failure by either party to comply with its obligations under the Agreement due to a Force Majeure is not deemed a breach of the Agreement. "Force Majeure" means, with respect to a party, any event or circumstance, regardless of whether it was foreseeable, that was not caused by that party and that prevents a party from complying with its obligations under the Agreement (other than an obligation to pay money). The non-performing party shall promptly notify the other of the Force Majeure, use reasonable efforts to limit damages to other party and to resume its performance as soon as possible.
- 11.4. IPR. No ownership to any IPR related to Cloud Services or results of Professional Services is granted to the Customer.
- 11.5. Notices. All formal notices under the Agreement, such as claims, disputes, terminations and assignments, must be provided via email followed by an original letter by courier or certified mail, and addressed to the contact person specified in the Sales Agreement or to such other person indicated by the party in writing.
- 11.6. References. Customer grants ICreative the right to use its name and logo for internal and external reference purposes which right Customer may revoke at any time in writing. Any further reference use is subject to mutual agreement.
- 11.7. Survival. Terms of sections 8 (Limitation of Liability) and 10 (Applicable Law and Disputes), as well as other sections of

- 11.8. these General Terms which by their nature are intended to survive, will survive the termination of the Agreement. Other. The Agreement constitutes the parties' entire agreement regarding its subject matter, superseding all prior oral or written communications. If any part of the Agreement is held unenforceable, the rest remains in full force and effect. Failure to enforce any provision of the Agreement will not constitute a waiver. The Agreement does not create an agency, partnership, or joint venture. The Agreement may not be amended, superseded nor any obligation waived, except in writing and signed by authorized representatives of both parties.

## 12. Definitions

- Affiliate means any legal entity that a party owns, that owns a party, or that is under common ownership with a party, ownership meaning holding more than 50% of the shares or voting rights of an entity.
- Cloud Service means each ICreative service made available to Customer via a network and specified in Sales Agreement, and the underlying infrastructure, such as data centres, and all procedures used in connection with providing Cloud Services, excluding Professional Services.
- Customer means customer legal entity specified in Sales Agreement.
- Customer Data means all data provided to ICreative by Customer (or at its direction) via Cloud Services.
- IPR means all present and future intellectual property rights including copyrights, trademarks and patents.
- Personal Data means data contained within Customer Data that relates to an identified or identifiable natural person as defined in the applicable data protection legislation.
- Professional Services means consultation, operational analysis, training, design and other preparatory project work related to Cloud Services as specified in Sales Agreement or SOW (if applicable).
- Service Documentation means ICreative's standard description of each Cloud Service.
- SOW means a statement of work or other similar document describing Professional Services.
- Subcontractor means ICreative Affiliates and other subcontractors who fulfil and/or assist with performance of the Agreement.
- Technical Requirements means Cloud Service technical minimum requirements specified by ICreative or its Subcontractor.