

## **End User License Agreement**

*Last updated: Dec 6<sup>th</sup>, 2021*

Welcome to ImagenAI, a downloadable desktop app that allows you to improve professional photo editing procedures and save time for what really matters. By sending us examples of your editing preferences of your photos collection ("**Catalog**"), you will help our algorithm to learn your unique editing style ("**Editing Style**"), and to apply it automatically to your photos on a third party photo editing platform, including, without limitation, Adobe Lightroom, and other platforms which may be compatible with our service, from time to time, as notified on our website, at <https://www.imagen-ai.com/>.

THIS END USER LICENSE AGREEMENT AND THE TERMS SET FORTH BELOW (THIS "**AGREEMENT**") CONSTITUTE A BINDING CONTRACT BETWEEN YOU AND IMAGENAI LTD. ("**WE**", "**US**", "**OUR**" OR "**IMAGENAI**"). THE AGREEMENT SETS FORTH YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO YOUR USE OF THE IMAGENAI SERVICE, INCLUDING ALL DOCUMENTATION AND OTHER MATERIALS ATTACHED TO THE EXECUTABLE AND INSTALLATION FILES THAT YOU DOWNLOADED (HEREINAFTER COLLECTIVELY REFERRED TO AS THE "**SERVICE**"). ANY USE OF THE SERVICE, INCLUDING ITS DOWNLOADING AND INSTALLATION ARE SUBJECT TO THIS AGREEMENT.

IN ORDER TO USE THE SERVICE, YOU MUST ASSENT THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO THE TERMS AND CONDITIONS CONTAINED HEREIN.

THIS AGREEMENT LIMITS OUR LIABILITY AND OBLIGATIONS TO YOU, TO THE TERMS SET FORTH BELOW AND PERMITS US TO CHANGE, SUSPEND, OR TERMINATE YOUR LICENSE. IF YOU DO NOT AGREE TO THIS AGREEMENT IN ITS ENTIRETY, DO NOT DOWNLOAD, INSTALL, COPY OR USE THE SERVICE.

### **License**

We may, at our sole discretion, provide users access to certain Services at no cost ("Free Services"). If you are accessing the Services on a non-paid basis, your access to the Free Services will be limited to no more than 1,000 edits to your Catalog. If you are a registered user or subscriber (i.e. you either signed up for an account with us, or purchased a subscription plan), you will have access to additional Services based on the plan that you select and time commitment. We reserve the right at any time to modify or discontinue, temporarily or permanently, the Services (or any part thereof) with or without notice. You acknowledge that we may change our fees and/or fee structures for Services from time to time in our sole discretion, including instituting fees for use of Services that were formerly included in Free Services or other free functionality on the Site without liability to you.

Except as expressly stated in these terms, your subscription will remain in effect indefinitely as long as you do not terminate it. If you choose to terminate your subscription, your subscription will continue until the end of your subscription period depending on the subscription plan you purchased. Once your subscription is terminated, you must cease any use of the Software and/or the Service.

If you wish to maintain your user profile during the period when your subscription is inactive, additional charges for storing your profile may apply at the sole discretion of ImagenAI.

No refunds will be given except as expressly provided in the subscription terms you purchased.

The Service available at your renewal date may be different by its functionalities and features from the Service available when you first purchased your license(s) from ImagenAI. You agree that your decision to acquire the license to use the Service is not subject to the availability of any future functionality or features and that ImagenAI will not be liable for the absence of such functionalities and features in the future.

### **Restrictions**

You are permitted to use the Service solely in accordance with the terms set forth herein. You are not permitted to use the Service in any other manner, unless you have received our express prior consent, in writing, to do so, and only subject to the terms of such consent (if given).

You may not -

- Use the Service for any activity that constitutes or encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national, foreign law or industry standard;
- Circumvent, impair, manipulate, disrupt or breach the Service's technical limitations or security mechanisms;
- Reverse engineer, decompile, disassemble, derive the source code of, scrape, hack, or modify the Service or any part thereof or breach the intellectual property provision set forth below;
- Use any tool to reveal or enable features or functionalities that are otherwise disabled, inaccessible or undocumented in the Service;
- Use the Service to store, transmit, distribute or attempt to transmit or distribute any viruses, trojan horses, worms, time bombs, and other harmful or malicious code, files, scripts, agents or programs;
- Remove, tamper with, or cause to not be displayed, any trademark, logo, copyright or other intellectual property notice originally intended to be displayed in or by the Service;
- Incorporate, integrate or combine, or assist others with incorporating, integrating or combining, the Service or any part thereof, with another application, software or service of any kind;
- access the Services using multiple user IDs, for the purpose of gaining repeated access to the Free Services;
- Use the Service if you offer services competitive or substantially similar to ours, except with our prior written consent, or for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes; and
- Use or have others use, or provide or make available to third parties, the Service or any part thereof, including, without limitation, by reproducing, mirroring, reselling, licensing, renting, leasing, transferring, lending, timesharing, assigning, redistributing or displaying the Service or any part thereof.

### **Privacy**

We respect your privacy. For information about how we collect, use, share, or otherwise process information about you and your use of our Service, please see our Privacy Notice, available at:

<https://www.imagen-ai.com/privacy-policy>

### **Intellectual Property**

All rights, title and interest in and to the Service (except for your Catalog and Editing Style), its design and any aspect related to its operation, including, without limitation, patents, copyrights, trademarks, trade names, service marks, trade secrets and other intellectual property rights, and any goodwill associated therewith, are owned by, or licensed to ImagenAI. Other than as expressly granted herein, the Agreement does not grant you any rights to patents, copyrights, trademarks (whether registered or unregistered), trade names, trade secrets, domain names or any other rights, functions or licenses with respect to the Service.

Unless otherwise expressly permitted in this Agreement, you may not copy, distribute, display or perform publicly, sublicense, decompile, disassemble, reduce to human readable form, execute publicly, make available to the public, adapt, process, compile, translate, sell, lend, rent, reverse engineer, combine with other software, modify or create derivative works of any of the Service or any content, either by yourself or by a third party on your behalf, in any way or by any means, including, but not limited to electronic, mechanical or optical means, without our prior, express written authorization.

You may not adapt or otherwise use any name, mark or logo that is identical, or confusingly similar to any of our trademarks, service marks and logos. You must avoid any action or omission that may dilute or tarnish our goodwill.

The Service may include and/or require the usage of third-party applications and software components ("**Third Party Elements**") such as Adobe Lightroom. Your use of third-Party Elements is subject to the terms and conditions of their applicable licenses, not this Agreement. **You are solely responsible for obtaining the necessary license or permission to use any and all such third-Party Elements, and we bear no responsibility in this regard.**

You retain all rights and ownership of your Catalog and Editing Style. We do not claim any ownership rights whatsoever to your Catalog and Editing Style.

By using our Service, you hereby grant ImagenAI a free of charge, worldwide, non-exclusive, non-transferable, revocable, license, to use your Catalog and Editing Style for the purpose of providing you the features of the Service, and for developing our Service including but not limited to our algorithm.

ImagenAI will not use your Editing Style and/or Catalog for any other purpose without your prior consent. We will not offer your Editing Style to other users or third parties without your prior consent except as expressly stated in this agreement.

### **Storage and backup**

ImagenAI highly recommends that you back up your Catalogs by yourself to avoid any damages or loss. ImagenAI will not be liable for any loss of photos, content or any of your data caused by errors or malfunction on the storage process.

### **Feedback**

To the extent You provide us any feedback, comments or suggestions ("Feedback"), you grant us a royalty-free, fully paid up, worldwide, perpetual and irrevocable license to incorporate the Feedback into the Services or any of our current or future products or services.

### **Our Access to Your Data**

In order to perform the Service, where permitted by law, we will access, view, or edit your Catalog, and upload your photos (together "Data") into our servers using our Service. We may also need to access or view your Catalog or your photos to (A) respond to Feedback or support requests; (B) detect, prevent, or otherwise address fraud, security, legal, or technical issues; and (C) enforce these terms.

### **Modifications**

From time to time, ImagenAI may release updates, upgrades, new releases and new versions of the Service, enhancements and error correction patches (collectively "**Updates**"). We may provide you with Updates, at our sole discretion, with or without charge. These Updates, insofar as offered, may add or remove Service functionality and features, and change the Service's structure, layout, design, look and feel or any other aspect. Such Updates, by their nature, may cause malfunctions or inconvenience. You will have no plea, claim or demand against us in connection with such Updates or any malfunctions caused as a result of such Updates. For the avoidance of doubt, we are not obligated to offer or provide any Updates.

The use of an Update, is subject to the terms and conditions of this Agreement, unless such Update is subject to the provisions of another specific agreement, in which case the terms of that specific agreement will prevail. We may require you to give your consent to this Agreement or another specific agreement, prior to the use of any Update. If you decide to withhold your consent, you will not be permitted to use the Update.

### **DISCLAIMER OF WARRANTY**

THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND WITHOUT ANY TECHNICAL SUPPORT OR MAINTENANCE SERVICES, UNLESS EXPLICITLY STATED IN YOUR PURCHASE AGREEMENT.

IMAGENAI DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE AND ANY PART THEREOF (INCLUDING SERVICE DOCUMENTATION AND THE CONTENT), INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, NON-INFRINGEMENT, TITLE, COMPATIBILITY, PERFORMANCE, SECURITY OR ACCURACY. IMAGENAI DOES NOT WARRANT THAT THE SERVICE WILL OPERATE IN AN UNINTERRUPTED OR ERROR-FREE MANNER OR THAT ANY DEFECTS OR ERRORS IN THE SERVICE WILL BE CORRECTED, OR THAT THE SERVICE WILL ALWAYS BE AVAILABLE OR FREE FROM ALL HARMFUL COMPONENTS. YOU AGREE AND ACKNOWLEDGE THAT THE USE OF THE SERVICE IS ENTIRELY, OR AT THE MAXIMUM PERMITTED BY THE APPLICABLE LAW, AT YOUR OWN RISK.

#### **LIMITATION OF LIABILITY**

YOU ACKNOWLEDGE THAT THE SERVICE MAY THEREFORE NOT BE COMPLETELY FREE OF ERRORS. YOU FURTHER ACKNOWLEDGE THAT THE PERFORMANCE OF THE SERVICE MAY BE AFFECTED BY ANY NUMBER OF FACTORS, INCLUDING WITHOUT LIMITATION, TECHNICAL FAILURES, ACTS OR OMISSIONS OF THIRD PARTIES AND OTHER CAUSES. BY USING THE LICENSED SERVICE, YOU DECLARE THAT YOU ACCEPT THESE FACTS AND THEIR CONSEQUENCES.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IMAGENAI, ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, SUB-CONTRACTORS AND AGENTS WILL HAVE NO LIABILITY OF ANY NATURE WHATSOEVER, FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGE, OR ANY OTHER DAMAGE, AND LOSS (INCLUDING LOSS OF PROFIT AND LOSS OF DATA), COSTS, EXPENSES AND PAYMENTS, EVEN IF SUCH DAMAGES WERE FORESEEN, WHETHER ARISING IN CONTRACT, TORT, NEGLIGENCE OF ANY DEGREE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, WITH RESPECT TO THE SERVICE, ITS USE OR THE INABILITY TO USE IT, THE CONTENT, FROM ANY FAILURE, ERROR, OR BREAKDOWN IN THE FUNCTION OF THE SERVICE, OR FROM YOUR RELIANCE ON OR IN CONNECTION WITH THE SERVICE OR THE CONTENT, OR FROM ANY FAULT, OR ERROR MADE BY IMAGENAI'S STAFF OR ANYONE ACTING ON ITS BEHALF.

#### **Indemnification**

You agree to indemnify, defend and hold harmless ImagenAI, its managers, directors, shareholders, employees, sub-contractors, agents and anyone acting on their behalf, at your own expense, from and against any damages, loss, costs, expenses and payments, including reasonable attorney's fees and legal expenses, resulting from any complaint, claim, or demand, arising from, or in connection with your use of the Service, or your breach of this Agreement, or any other rules or regulations applicable to the Service, or your violation, or infringement of any other persons rights by using the Service including but not limited to copyrights or privacy infringement regarding the photos you take.

#### **Term, Termination and Survival**

ImagenAI may terminate this Agreement and your rights hereunder, in any of the following events:

- You have performed any act or omission which is harmful or likely to be harmful to us, or any other third party, including other users;
- You used or attempted to use the Service to perform any act which may be deemed unlawful, or for the purpose of enabling, facilitating, assisting or inducing the performance of such an act;
- You have breached the terms of the Agreement;
- When we cease our operation;
- If we are so required by a court or other competent authority;
- If we determine that the use of the Service infringes or is likely to infringe intellectual property rights or violates or is likely to violate any applicable law; or
- In any other instance where we believe that termination meets the appropriate legal standards.

Upon termination of this Agreement, your license to use the Service is revoked. In such case, you must immediately cease any and all use of the Service, and permanently remove all files of the Service stored on all computers under your control or possession.

The following provisions will survive any termination or expiration of the Agreement: Intellectual Property, Disclaimer of Warranty, Limitation of Liability, Indemnification and Governing Law and Jurisdiction.

Termination of this Agreement by ImagenAI will be in addition to, and not in lieu of, any equitable or other remedies available to ImagenAI.

#### **Governing Law and Jurisdiction**

This Agreement, your use of the Service and any matter related thereto, will be exclusively governed by and construed in accordance with the laws of the State of Israel, excluding any otherwise applicable rules of conflict of laws, which would result in the application of the laws of a jurisdiction other than those of the State of Israel.

The District Court of Tel Aviv shall have sole and exclusive jurisdiction over any claim, dispute or controversy in connection with this Agreement, your use of the Service or any matter related thereto. Each party hereby expressly and irrevocably consents and submits to the personal jurisdiction of the competent courts in the Tel Aviv District in Israel, and expressly waives any right to object to such personal jurisdiction or the convenience of such forum.

#### **Assignment**

You may not assign your rights under this Agreement to any third party without our prior written consent. Any such assignment will be null and void.

We may assign this Agreement and our rights and obligations herein, to any third party.

#### **Complete Terms**

This Agreement constitutes the entire and complete agreement between you and us concerning the subject matter of this Agreement and it supersedes any prior negotiations, proposal, agreement, representation or understanding between you and ImagenAI.

#### **Severability.**

If any provision of this Agreement is held invalid or unenforceable, that provision must be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties and the remaining provisions will remain in full force and effect.

#### **No Waiver**

The failure of ImagenAI to enforce any rights granted herein or to take action against you in the event of any breach hereunder, will not be deemed a waiver by ImagenAI as to subsequent enforcement of rights or subsequent actions in the event of future breaches.