

Terms of Service

These terms of service (the “**TOS**”) govern your use of the services provided by the AI Avatar Maker application (the “**Application**” or “**App**”).

The Application provides you with tools to create digital images using AI models (the “**Services**”), subject to the terms and conditions of the TOS.

By accessing the Application or by using it in any other manner, you signify your acceptance of the TOS. If you do not agree to the TOS, please remove the Application from your smart device.

For the sake of clarity, your right to access and use the Application and/or Services is non-transferable and non-sublicensable.

If you do not agree with (do not accept) this Agreement, or if you do not agree at least with one of the provisions of this Agreement, you are not authorized to, and you may not access, download, install or use the App and you must promptly discontinue downloading, installing the App and remove (delete) the App from any mobile device in your possession or under your control.

Our Fees

The Services are subject to a yearly, monthly or weekly fee, as further detailed in our Pricing Page, which is subject to updates from time to time, at our sole discretion. You are also required to pay all related taxes and costs in relation to the Services, where applicable.

Note that payments’ details are processed via Apple and/or its affiliates and are accordingly subject to the Apple App-Store’s terms and conditions, including, without limitation, Apple’s refunds and chargebacks policy. For the sake of clarity, we have no access to your payments’ details, and we do not offer refunds or chargebacks.

To ensure that you do not experience an interruption or loss of Services, our subscription includes an automatic renewal feature, which means that we will automatically charge you the applicable fees at the end of each pay period. Unless otherwise notified to you, such renewal will be at the same price (excluding discounts and coupons) as offered to you while buying your subscription with us, subject to applicable taxes.

If can cancel your subscription, it will stay active until the end of the pay period.

Note that if we fail to charge the fees for any reason, we will cancel or suspend your account, at our sole discretion.

Ownership

You hereby represent and warrant that you own all data which you share with the Application to receive the Services (“**Your Data**”).

You must ensure that your use of Your Data does not violate laws or regulations, including, without limitation, any third party's intellectual property rights, and immediately inform us about any claim or demand thereof.

For the sake of clarity, we assume no responsibility for any claim or demand concerning your activities with the Application and/or Services.

We do not claim ownership over Your Data. However, if you share Your Data with the Application, you represent and warrant that you do not violate any third party's rights by doing so and that we are allowed to use Your Data for the following purposes (i) addressing your requests; (ii) improving our Application and/or Services; (iii) complying with applicable laws; and, (iv) legal defense.

You hereby grant us an assignable, non-exclusive, worldwide, royalty-free, fully-paid, sublicensable (through multiple tiers), irrevocable, and perpetual license, in all media formats and through any media platform, to access, distribute, process, reproduce, publicly perform, publicly display, create derivative works of, and use Your Data, to (1) fulfill the TOS; (2) provide you with the Services; (3) improve the Services; and, (4) promote the Application and/or Services (collectively, "**Your Account Content License**").

Your Account Content License will survive the termination of the TOS. You represent and warrant that all necessary licenses, permissions, consents, and approvals have been obtained for you to grant Your Account Content License.

You agree to irrevocably waive all moral rights you may have in Your Data against us and our affiliates. Moral Rights mean both paternity and integrity rights, objection to any distortion, mutilation, modification, claims to authorship, or any similar rights given under different applicable laws or treaties.

All information and materials available on the Application and/or Services which are not Your Data are our sole property or licensed to us by third parties. Subject to the terms and conditions of the TOS, The App is intended only for your personal non-commercial use. You shall use the App only for the purposes, mentioned above. We do not grant you any rights, functions, or licenses concerning the Application and/or Services, and we reserve all rights not expressly granted in the TOS.

Without limiting our rights under the Disclaimer of Warranties and Limitation of Liability clauses of the TOS, if you believe that we violate your rights, including, without limitation, your intellectual property rights, or any third party's rights, concerning any content and materials related to the Services or otherwise, please contact us at aiavatar@videobakery.co. We will make efforts to address your concerns as soon as possible.

Responsibilities and Acceptable Use

You are solely responsible for the performance of the Services and the manner in which the Services are performed, and we will not bear any liability in connection therewith or be responsible for any claim arising out of, or resulting from, the Application and/or Services.

By using the Application and/or Services, you represent that (i) you are at least 18 years old; (ii) you are qualified to use the Application and/or Services; and, (iii) you will use the Application and/or Services in accordance with the TOS and applicable law.

You are responsible for all of the acts or omissions associated with your access and use of the Application and/or Services as well as the access and use of the Application and/or Services by anyone on your behalf.

You undertake to abide by all applicable local, state, national, and foreign laws, treaties, and regulations in connection with your use of the Application and/or Services.

You undertake to comply with any instructions concerning access to or use of the Application and/or Services that we may offer from time to time. You specifically agree not to (i) access (or attempt to access) the Application and/or Services by any unauthorized means; (ii) breach the TOS or any other applicable laws, rules, and regulations; (iii) interfere with or disrupt the integrity or damage the performance of the Application and/or Services; (iv) impersonate any person or entity, or make any false statement pertaining to your identity, employment, agency or affiliation with any person or entity; (v) collect or process personal information related to others without their explicit consent; (vi) be involved in any illegal activities; or, (vii) send, store, provide, or link through the Application and/or Services any content or material that contain or may reasonably be deemed as -

- Infringing or violating intellectual property rights of other parties, including, without limitation, patents, copyrights, and trademarks
- Software viruses, Trojan Horses, Worms, Vandals, Spyware, and any other Malicious Applications or any other similar software or programs that may damage the operation of the Application and/or Services
- Encouraging, supporting, assisting, providing instructions, or advising in the committing of a criminal offense, under applicable laws
- Constituting a violation of a person's right for privacy or right of publicity
- Prohibited by any applicable law, including, without limitation, court restraining orders, to be posted, published, disseminated, or otherwise made available to the public
- Threatening, abusive, harassing, defamatory, libelous, vulgar, obscene or racially, ethnically or otherwise objectionable
- Unsolicited commercial communications ("spam"), chain letters, or pyramid schemes

Except as expressly permitted in the TOS, you may not (i) commercially exploit the Application and/or Services or make them available to any third party in any way; (ii) display publicly, decompile, disassemble, reduce to human-readable form, execute publicly, adapt, process, compile, translate, lend, rent, reverse engineer or combine the Application and/or Services with other software or services; (iii) interfere in any manner with the functionality of the Application and/or Services or use the Application and/or Services in any way that breaches any code of

conduct, policy or other notice applicable to the Application; (iv) copy any ideas, features, functions or graphics of the Application and/or Services or any content, including, without limitation, the audio and visual information, documents, software, products and services contained or made available to you in the course of using the Application and/or Services; or, (viii) otherwise use the Application not in compliance with the terms of this Agreement.

Without limiting our rights under the TOS and applicable law, should we become aware that you have violated this provision, we will be entitled to remove the content in violation, terminate your subscription, and notify Apple and relevant authorities.

Misuse, Malicious Use, and Out-of-Scope Use

Note: This section is taken from the DALLE-MINI model card, but applies in the same way to our AI model.

The model should not be used to intentionally create or disseminate images that create hostile or alienating environments for people. This includes generating images that people would foreseeably find disturbing, distressing, or offensive; or content that propagates historical or current stereotypes.

Out-of-Scope Use

The model was not trained to be factual or true representations of people or events, and therefore using the model to generate such content is out-of-scope for the abilities of this model.

Misuse and Malicious Use

Using the model to generate content that is cruel to individuals is a misuse of this model. This includes, but is not limited to:

- Generating demeaning, dehumanizing, or otherwise harmful representations of people or their environments, cultures, religions, etc.
- Intentionally promoting or propagating discriminatory content or harmful stereotypes.
- Impersonating individuals without their consent.
- Sexual content without consent of the people who might see it.
- Mis- and disinformation
- Representations of egregious violence and gore
- Sharing of copyrighted or licensed material in violation of its terms of use.
- Sharing content that is an alteration of copyrighted or licensed material in violation of its terms of use.

Disclaimer of Warranties

You acknowledge and agree that the Application and/or Services are provided for use “as is”, without any warranties of accuracy, reliability, likely-result, merchantability, fitness for a particular purpose, non-infringement, compatibility, security, or being up to date.

Any use of the Application and/or Services are at your sole risk.

To the maximum extent permitted by law, we expressly disclaim any warranties, conditions, representations, and guarantees concerning the Application and/or Services, the accuracy, reliability, adequacy, or completeness of the Application and/or Services, or any other material provided by us.

We do not give you any guarantee for the proper functionality of the App, however, if you believe that our App has not met your expectations, you may notify Apple, and Apple may refund the purchase price for the App to you; and that, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty.

No representation or other affirmation of fact, including, without limitation, statements about the capacity, suitability for use, or performance of the Application and/or Services, whether made by our employees or otherwise, which is not contained in the TOS, will be deemed to be a warranty by us for any purpose, or give rise to any liability of us whatsoever.

Limitation of Liability

In no event will we be liable for any damages whatsoever, including, without limitation, direct, indirect, special, incidental, or consequential damages, loss of profit, business, saving or opportunity, damage to any content, reputation or goodwill, costs, or expenses regarding substitute goods or services, whether in an action of contract, negligence, or other tortious action resulting from use of the Application and/or Services or arising out of the use or performance of the Application and/or Services, regardless of whether we or our authorized representatives have been advised of the possibility of such damages and even if such damages were reasonably foreseeable.

Indemnification

You agree to indemnify, defend, and hold us and our officers, managers, directors, shareholders, employees, sub-contractors, agents, licensors, and anyone acting on our behalf harmless, at your expense and immediately after receiving written notice from us, from and against, any damages, loss, costs, expenses, fines, and payments, including, without limitation, reasonable attorney's fees and legal expenses, resulting from any complaint, claim, or demand by any third party arising from or in connection with the use of the Application and/or Services, or any of your actions or omissions concerning the performance of the TOS.

Availability and Delays

The availability and functionality of the Application and/or Services depend on a range of factors and elements, including, without limitation, software, hardware, and communication networks, which may be provided by third parties.

These factors are not error-free and we do not warrant or guarantee that the Application and/or Services will (i) operate without disruption, limitations, delays, errors, or interruptions; and (ii) be accessible or available at all times, or immune from unauthorized access.

We do not warrant that the App will be compatible with all hardware and software which you may use. We make no warranty that your access to the App will be uninterrupted, timely or error-free. You acknowledge the App is provided via the internet and mobile networks and so the quality and availability of the App may be affected by factors outside our reasonable control. The version of the App may be upgraded from time to time to add support for new functions and services. We may change or update the App and anything described in it without noticing you. If the need arises, we may suspend access to the App, or close it indefinitely.

Third Party Websites And Resources

App may link you to other sites on the Internet and contracted third parties to provide you certain services. We have no control over and accept no responsibility for the content of any website or mobile application to which a link from the App exists (unless we are the provider of those linked websites or mobile applications). Such linked websites and mobile applications are provided as-is for your convenience only with no warranty, express or implied, for the information provided within them.

You acknowledge sole responsibility for and assume all risk arising from your use of any third-party websites or resources.

If you have any queries, concerns or complaints about such third party websites or mobile applications (including, but not limited to, queries, concerns or complaints relating to products, orders for products, faulty products and refunds) you must direct them to the operator of that third party website or mobile application.

Term and Termination

The TOS is effective from the moment you install the Application and provide us with access to your smart device's relevant data, as further indicated in our [Privacy Policy](#), and, unless otherwise stated in the TOS, will continue in full force and effect until terminated by us.

You have the right to cancel your subscription, directly from the [Application settings](#), provided, however, that any fees that have been received by us prior to such termination will be non-refundable. Your subscription will stay active until the end of the pay period.

We have the right to terminate your use of the Application and Services upon written notice to you at the end of your subscription, provided, however, that if we find you in violation of the TOS, we can terminate your subscription and use of the Application and/or Services immediately.

Modifications

We can modify the TOS from time to time after giving proper notice. We will keep you informed about any changes by updating this Agreement and you waive any right to receive specific notice of each such change.

Until the modified TOS takes effect, you can choose not to accept it and terminate your use of the Application and/or Services. If you continue your use of the Application and/or Services after the modified TOS takes effect, it will express your agreement to the modified TOS.

Notwithstanding the above said, if we need to adopt a modified TOS due to legal requirements, the modified TOS will become effective as soon as required by law.

Change of Control

We may transfer ownership rights and title in the Application and/or Services, whether by way of merger, sale of shares, sale of assets, license, or otherwise, to a third party, provided that your rights remain in effect according to the TOS.

Privacy

Please read our [Privacy Policy](#) as well, as it serves as an integral part of the TOS.

Please note that the Application and/or Services do not target and are not intended to attract children under the age of 18. Accordingly, the Application and/or Services neither solicit personal information related to children under the age of 18 nor send them requests for any collection of personal information related to them.

Disputes

If the value of the relief sought is 2,000 US dollars or less, the parties will make good faith efforts to resolve the dispute between them amicably. If such direct talks do not resolve the dispute, each party may initiate an Alternative Dispute Resolution ("**ADR**") process with an established ADR service provider. The parties will agree on the identity of the ADR service provider and the dispute will be conducted in English, by written submissions through e-mail correspondence, other electronic communications, or telephone conversations, without the need for personal appearance. Any judgment on the award rendered by the ADR provider may be entered in any court of competent jurisdiction.

If the value of the relief sought is more than 2,000 US dollars, the TOS and any claim, cause of action, or dispute arising out of or related thereto, will be governed solely by the laws of the State of Israel, regardless of your country of origin or where you access the Application, and without giving effect to any conflicts of law principles, which would result in the application of the laws of a jurisdiction other than the State of Israel. The competent courts in Tel Aviv, Israel will have sole and exclusive jurisdiction concerning the TOS and any claim, cause of action, or dispute arising out of or related thereto.

General

The TOS comprises the entire agreement between you and us concerning the Application and/or Services and supersedes all prior or contemporaneous negotiations, discussions, or agreements, whether written or oral, between you and us about the Application and/or Services.

If any provision of the TOS is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision will be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision, with all other provisions remaining in full force and effect.

Any failure of us to enforce any right or provision in the TOS will not constitute a waiver of such right or provision unless acknowledged and agreed to by us in writing.

The section headings in the TOS are included for convenience only and will take no part in the interpretation or construing of the TOS.

The TOS may not be assigned by you without our prior written approval and any assignment without such prior written approval will be null and void. We may freely assign our rights and obligations, in part or in full, at our sole discretion.

The Ownership, Disclaimer of Warranties, Limitation of Liability, Indemnification, Privacy, Change of Control, and Disputes provisions under the TOS will survive any termination of engagement between you and us.

The language of the TOS is English. To the maximum extent permitted by law, you hereby irrevocably waive any law applicable to you requiring that the TOS be translated and localized to meet your language as well as any other applicable local requirement.

You are aware that when you download the Application from Apple App-Store, additional terms and conditions apply to you and your use of the Application and/or Services, as provided by Apple.

You agree not to rely on the Application for data back-up purposes, since the Application is not intended to serve as a data storage or archive center. You are entirely responsible and liable for maintaining and backing-up all of your content.

This Agreement and the use of the Application by you will not be construed as, and do not create, or imply a relationship of agency, joint venture, franchise, or partnership between you and us. You are not allowed to make any representations, bind, or hold yourself out as a representative of us.

Contact Us

Should you have questions, comments, concerns, or requests about the TOS, Application, and/or Services, please contact us at aiavatar@videobakery.co.

Last Updated: January 9, 2023