

**IKONIK MEDIA, INC**  
**GENERAL TERMS & CONDITIONS OF SERVICE**

Confidential

**By executing an Ikonik Media Service Agreement (as defined below) which references these General Terms and Conditions of Service (“Terms and Conditions”), You agree to be bound by the Agreement (as defined below), which will govern Your use of the Services and Technology provided by Ikonik Media Inc (“Ikonik Media”). If You are executing an Ikonik Media Service Agreement on behalf of a company or other legal non-person entity, You represent that You have the authority to bind such entity to this Agreement, in which case the terms “You” or “Your” shall refer to such entity. The “Effective Date” refers to the date on which You first execute an Ikonik Media Service Agreement. All Ikonik Media Service Agreements accepted by Ikonik Media, on or after the Effective Date, these Terms and Conditions, and any other terms and conditions set forth in, or incorporated by reference in, these Terms and Conditions or in any Ikonik Media Service Agreements shall be deemed to form one and the same agreement (all of the foregoing are collectively the “Agreement”). Capitalized terms have the meaning given to them in the Agreement; certain capitalized terms are defined in Section 16 herein.**

**1. The Services.**

**1.1.** You may purchase certain services from Ikonik Media (“Services”) each as further described on an applicable Ikonik Media Service Agreement (an “Ikonik Media Service Agreement”).

**1.2.** Each Ikonik Media Service Agreement accepted by Ikonik Media on or after the Effective Date shall become part of, and subject to, these Terms and Conditions. In the event of a conflict between these Terms and Conditions and a given Ikonik Media Service Agreement, the Terms and Conditions shall control; provided, however, that, where the parties have expressly agreed in writing in a Ikonik Media Service Agreement that the Ikonik Media Service Agreement shall control, the Ikonik Media Service Agreement shall control, but only with respect to the parties’ performance under that Ikonik Media Service Agreement.

**2. Term and Termination.**

**2.1.** Each Ikonik Media Service Agreement becomes effective on the Effective Date set forth on such Ikonik Media Service Agreement. The term for each Ikonik Media Service Agreement shall begin upon the latter of the Effective Date, or the date of initial notification of Service availability/use provided by Ikonik Media to You (hereinafter the “Commencement Date”) and shall extend for the period of months thereafter as set forth in the applicable Ikonik Media Service Agreement (the “Ikonik Media Service Agreement Term”). Notwithstanding the foregoing, if sixty (60) days have passed from the Effective Date without occurrence of the Commencement Date, the Commencement Date shall be deemed to have occurred, and billing will commence, on the sixtieth (60th) day from the Effective Date.

**2.2.** The Ikonik Media Service Agreement Term is stated in a given Ikonik Media Service Agreement. Upon

expiration of the initial Ikonik Media Service Agreement Term or any renewal Ikonik Media Service Agreement Term, the Ikonik Media Service Agreement Term shall automatically renew for an additional period equal in duration to the initial Ikonik Media Service Agreement Term, unless a party has delivered to the other party written notice to the contrary at least sixty (60) days prior to the end of the then-current Ikonik Media Service Agreement Term.

**2.3.** Upon any early termination of any Ikonik Media Service Agreement by You without cause, You shall pay to Ikonik Media a fee equal to, for each Ikonik Media Service Agreement so terminated (i) the number of months remaining in the Ikonik Media Service Agreement Term, multiplied by (ii) the minimum Monthly Charge(s) under such Ikonik Media Service Agreement (“Early Termination Fee”). The parties agree that the Early Termination Fee is a liquidated damage for Your breach in early termination of an Ikonik Media Service Agreement without cause, and is not a penalty. The parties agree that the Early Termination Fee is reasonable because: (a) the amount of actual damages to Ikonik Media caused by such early termination is difficult or impossible to accurately calculate; and (b) the Early Termination Fee is a reasonable pre-estimate of Ikonik Media’s probable loss in the event of such early termination. Upon termination or expiration of this Agreement for any reason, the following provisions of these Terms and Conditions shall survive, along with any other provisions of the Agreement which by their terms survive such termination or expiration: Sections 3, 5, 6, 8, 9, 12, 14, and 15.

**2.4.** Either party may terminate this Agreement (and all Ikonik Media Service Agreements) due to the other party’s breach of a material covenant, term or condition of this Agreement; provided that (i) the nonbreaching party has first provided written notice of such breach to the breaching party, and (ii) the breaching party has failed to cure such breach, if curable, within the thirty (30) day period following its receipt of such notice.

**3. Pricing and Payments.**

**3.1.** The rates and charges applicable to the Services are outlined in the applicable Ikonik Media Service Agreement(s) and incorporated by reference herein.

**3.2.** Base recurring charges shall be due either monthly or annually in advance, as set forth in the applicable Ikonik Media Services Agreement. Usage charges in excess of the base recurring charges shall be invoiced monthly in arrears. Any other charges or fees shall be payable as set forth in the applicable Ikonik Media Service Agreement. Services provided for a partial month will be invoiced on a pro-rata basis. All invoices shall be due and payable in United States Dollars within thirty (30) days of the date of the invoice without set-off or demand (“Due Date”). Customer shall pay all amounts by check, credit card, ACH or wire transfer. The unpaid and undisputed portion of any invoice not paid by the Due Date will be subject to an interest rate equal to 1.5% per month. Customer shall be deemed to be in material default hereunder if payment is not received within thirty (30) days of the Due Date and all amounts invoiced or earned but not yet invoiced by

**IKONIK MEDIA, INC**  
**GENERAL TERMS & CONDITIONS OF SERVICE**

Confidential

Ikonik Media shall be deemed "past due". In addition to any other remedy available at law or in equity, if all undisputed past due balances are not paid in full within thirty (30) days of the Due Date, Ikonik Media reserves the right to immediately suspend Services. If Ikonik Media elects to suspend Services, no Service interruption shall be deemed to occur and Ikonik Media shall have no responsibility to or liability for Services during such period of suspension.

**3.3.** Reasonable, documented travel costs for Ikonik Media personnel, including actual costs of airfare, hotel expenses, meals, and local transportation expenses incurred by Ikonik Media personnel solely in connection with the performance of Ikonik Media's obligations on Your premises, or on a location designated by You, shall be reimbursed by You.

**3.4.** If You have a bona fide dispute with respect to invoiced amounts, You must notify Ikonik Media of the dispute within seven (7) days of the invoice date at the notice address. You may withhold payment of the disputed charge(s), provided that: (i) You pay all undisputed amounts when due; (ii) You identify the specific charge(s) in dispute and provide a reasonably detailed written explanation of the basis for the dispute; and (iii) You reasonably cooperate with Ikonik Media in investigating and resolving the dispute. You waive any dispute regarding any amounts set forth on a given invoice if You do not timely notify Ikonik Media in accordance with this Section.

**3.5.** Your obligation to pay any fees or amounts due under this Agreement shall not be subject to any rights of set-off, counterclaim, deduction, defense or other right which You may have against Ikonik Media or any other party. Your sole and exclusive remedy for such a dispute will be an adjustment or credit to Your account in the event the dispute is resolved in Your favor.

**3.6.** All fees paid are non-refundable.

**4. General Obligations.**

**4.1.** Subject to these Terms and Conditions, Ikonik Media agrees to provide to You during the applicable Ikonik Media Service Agreement Term, and You agree to pay for, the Services as set forth in each Ikonik Media Service Agreement accepted by Ikonik Media.

**4.2.** While Ikonik Media utilizes certain Ikonik Media Technology (including hardware and software) at Ikonik Media's facilities as necessary to make the Services available and to store certain Content You provide, You are solely responsible for providing hardware, software, and Internet connectivity necessary for You to access and utilize the Services (except for certain Ikonik Media Technology which Ikonik Media may expressly agree to provide to You pursuant to an Ikonik Media Service Agreement).

**4.3.** Ikonik Media is not responsible for, and Your obligations under this Agreement are not relieved by, Your inability to access or utilize the Services or Ikonik Media Technology due to issues related to Your failure or

inability to provide appropriate hardware, software, power and Internet connectivity and bandwidth.

**5. License.**

**5.1.** Subject to Your continued compliance with the Terms and Conditions of this Agreement (including payment of all amounts due hereunder), Ikonik Media hereby grants You a non-exclusive, non-transferable, terminable, personal right and limited license to access and use a given Service only during the Ikonik Media Service Agreement Term under which the Service is provided to You.

**5.2.** Access and use of a Service shall be limited by use of username/s password/s ("Credentials"). You are responsible for all activity occurring in Your account. Except where Ikonik Media has actual notice of loss, theft or unauthorized use of Your Credentials, Ikonik Media shall have the right, without further inquiry, to rely on provision of Your Credentials as sufficient to authenticate Your use of the Service.

**5.3.** Except as expressly permitted under this Agreement or expressly authorized by Ikonik Media, You shall not: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services or Ikonik Media Technology in any way; (ii) copy, modify or make derivative works based upon the Services or Ikonik Media Technology; (iii) reverse engineer or access the Services or Ikonik Media Technology in order to (a) build a competitive product or service, (b) build a product using similar ideas, features or functions or graphics of the Services, or (c) copy any ideas, features, functions or graphics of the Services or Ikonik Media Technology.

**6. Intellectual Property Ownership.**

**6.1.** Ikonik Media (and its licensors, where applicable) own all right, title, and interest, including all related Intellectual Property Rights, in and to the Ikonik Media Technology and the Services, and any suggestions, ideas, enhancement requests, feedback, recommendations or other similar information provided by You or any other party relating to the Service.

**6.2.** This Agreement is not a sale and does not convey to You any rights of ownership in or related to the Service, Ikonik Media Technology or the Intellectual Property Rights owned by Ikonik Media or its licensors. The Ikonik Media name, the Ikonik Media logo, and the product names associated with the Services and/or Ikonik Media Technology are trademarks or service marks of Ikonik Media or of third parties, and no right or license is granted to use them hereunder.

**7. Billing Information.**

**7.1.** You agree to provide Ikonik Media with complete and accurate billing and contact information. This information includes Your name, Your legal company name (if applicable), street address, e-mail address, and name and telephone number of an authorized billing contact. You also agree to update this information within thirty (30) days of any change to it. Ikonik Media reserves the right, in addition to any other legal remedies, to terminate Your

**IKONIK MEDIA, INC**  
**GENERAL TERMS & CONDITIONS OF SERVICE**

Confidential

access to the Services and any Ikonik Media Technology if any contact information You have provided is false or fraudulent.

**7.2.** To the extent Ikonik Media expressly agrees to accept a credit card as a billing mechanism in connection with Your account, You agree that Ikonik IKONIK MEDIA, INC GENERAL TERMS & CONDITIONS OF SERVICE CONFIDENTIAL Media may automatically renew and bill Your credit card at the beginning of each period for which You are being billed. To the extent that Ikonik Media expressly agrees to accept payment in the form of ACH bank transfer as a billing mechanism in connection with Your account, You agree that Ikonik Media may automatically renew and bill Your account, using the ACH details You have provided, at the beginning of each period for which You are being billed.

**8. Content.**

**8.1.** The term “Content” means any data or material (including without limitation copyrightable subject matter, graphics, text, video content and audio content, trademarks, and service marks) that You direct Ikonik Media to acquire or use or is provided or submitted by You, or on Your behalf, or by any User to the Services in the course of use of the Services (including any of the foregoing that is to be used, modified, copied, adapted, exhibited, published, transmitted and/or distributed by Ikonik Media pursuant to an Ikonik Media Service Agreement).

**8.2.** All Content, including all copies of Content resulting from encoding, transcoding or other Services provided to You by Ikonik Media pursuant to an Ikonik Media Service Agreement, shall remain, as between You and Ikonik Media, Your sole and exclusive property. You hereby grant Ikonik Media, for the term of this Agreement and for so long thereafter as Ikonik Media is permitted to (or required by law to) retain the Content on a non-exclusive, worldwide, royalty free, transferable, sublicenseable license to modify, copy, adapt, exhibit, publish, transmit, publicly perform, publicly display and distribute the Content as required for Ikonik Media’ provision of the Services specified by a Ikonik Media Service Agreement during the applicable Ikonik Media Service Agreement Term.

**8.3.** You agree, represent, and warrant to Ikonik Media that You have and will maintain, throughout the applicable Ikonik Media Service Agreement Term, all necessary rights and permissions (including rights and permissions in any applicable Intellectual Property Rights) to provide Content to Ikonik Media and to grant the licenses granted by You under this Agreement. In addition, YOU AGREE TO PAY, WAIVE OR HAVE WAIVED BY THE APPLICABLE THIRD PARTY ANY AND ALL ROYALTIES, LICENSE FEES (E.G. BMI, ASCAP, SESAC, ETC.) AND OR SIMILAR AMOUNTS DUE TO ANY OWNER OF ANY OF THE INTELLECTUAL PROPERTY RIGHTS IN THE CONTENT APPLICABLE TO THE USE (INCLUDING BROADCAST) OF THE CONTENT. YOU FURTHER AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS IKONIK MEDIA, ITS OFFICERS, DIRECTORS, AND EMPLOYEES FOR ANY DEMANDS,

CLAIMS, LOSS, DAMAGE, EXPENSE (INCLUDING REASONABLE ATTORNEY’S FEES AND COURT COSTS), OR LIABILITY ARISING OUT OF ANY DEMAND, CLAIM, SUIT, OR PROCEEDING ALLEGING FACTS THAT WOULD BE A BREACH OF THE REPRESENTATIONS, WARRANTIES OR OBLIGATIONS SET FORTH IN THIS SECTION 8 OR SECTION 9.

**9. Your Obligations.**

You covenant and agree not to (i) use the Services, or collect, use or disclose any personally-identifiable information of any person, in any illegal or unlawful manner or for any illegal or unlawful purpose, (ii) use the Services to display or distribute any Content that is pornographic in nature, or (iii), or use the Services to display or distribute Content that incites or otherwise glorifies violence or celebrates the suffering and humiliation of others, or (iv) perform any act which interferes with or disrupts the Service. Ikonik Media will not review or screen Content for compliance with this Agreement or applicable law, and Ikonik Media shall have no obligation to do so, provided, however, that in addition to any other right Ikonik Media may have, Ikonik Media reserves the right to suspend Your access to and/or use of the Service to the extent that Ikonik Media determines, in good faith, that such suspension is necessary to comply with applicable law or to prevent significant harm to Ikonik Media or any end user of the Service.

**10. Limited Warranty.**

Ikonik Media represents and warrants that, during the applicable Ikonik Media Service Agreement Term, it will provide the Services in a professional, workmanlike manner consistent with general industry standards.

**11. Disclaimers.**

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, IKONIK MEDIA MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND TO YOU, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NONINFRINGEMENT, TITLE, OR SUITABILITY, OR WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE IKONIK MEDIA SERVICE IS PROVIDED ON AN “AS IS” BASIS ONLY. NO ADVICE OR INFORMATION OBTAINED BY YOU FROM IKONIK MEDIA SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

**12. Limitation of Liability.**

UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING FROM THE PERFORMANCE OR FAILURE OF PERFORMANCE OF ANY PROVISION OF THIS AGREEMENT (INCLUDING SUCH DAMAGES INCURRED BY THIRD PARTIES), SUCH AS, WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED

**IKONIK MEDIA, INC**  
**GENERAL TERMS & CONDITIONS OF SERVICE**

Confidential

PROFITS OR LOST BUSINESS. UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER FOR DAMAGES IN EXCESS OF (A)\$5,000 OR (B) THE TOTAL VALUE OF PAYMENTS EXPRESSLY IDENTIFIED IN THE IKONIK MEDIA SERVICE AGREEMENT UNDER WHICH LIABILITY AROSE, WHICHEVER OF (A) AND (B) IS LESS. NOTWITHSTANDING ANY OF THE FOREGOING IN THIS ENTIRE SECTION, THE LIMITATIONS SET FORTH IN THIS SECTION SHALL NOT APPLY TO LIMIT (I) YOUR PAYMENT OBLIGATIONS HEREUNDER (II) DAMAGES FOR INFRINGEMENT OF IKONIK MEDIA'S INTELLECTUAL PROPERTY RIGHTS, (III) DAMAGES FOR BREACHES OF SECTION 9 OF THIS AGREEMENT, (IV) DAMAGES RESULTING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (V) A PARTY'S INDEMNIFICATION OBLIGATIONS.

**13. Notice.**

Notices required or permitted under this Agreement must be given as follows to be effective. Ikonik Media may give notice by means of a general notice on the Internet web site operated by Ikonik Media at [www.Ikonik Media.com](http://www.Ikonik Media.com) ("Ikonik Media Web Site"), electronic mail to Your e-mail address on record in Your account information, or by written communication sent by first-class mail or pre-paid overnight courier to Your address on record in Your account information. Such notice shall be deemed to have been given upon the expiration of five days after mailing (if sent by pre-paid, first-class mail, return receipt requested), five days after posting of a general notice on the Ikonik Media Web Site, or 12 hours after sending (if sent by email). You must give notice to Ikonik Media (such notice shall be deemed given when received by Ikonik Media) by: letter sent by confirmed facsimile; or letter delivered by nationally recognized overnight delivery service or the U.S. Postal Service by prepaid, first-class, return-receipt requested, addressed as follows:

Ikonik Media Inc.  
Attention: Chief Financial Officer  
34 Broadmoor Ave, Suite 201  
Colorado Springs, CO 80906 USA  
Tel. (888) 945-6645  
Fax (719) 352-3695

**14. Modifications.**

Ikonik Media reserves the right to modify the terms and conditions of this Agreement at any time, effective upon posting of an updated version of the Agreement (or the portion thereof so modified) on the Ikonik Media Web Site. You are responsible for regularly reviewing the most-current version of this Agreement on the Ikonik Media Web Site. If You do not agree to be bound by such modifications, You may signify Your lack of agreement only by giving Ikonik Media notice of termination of this Agreement, in accordance with this Agreement, within thirty (30) days after such modifications are first posted; provided, however, that where such modifications are applicable only to a given Ikonik Media Service Agreement, You may only terminate the affected Ikonik Media Service Agreement, which notice of termination must also be given within thirty (30) days after such

modifications are first posted. There will be no Early Termination Fee payable in connection with termination pursuant to this Section. Failure to provide such notice of termination within the time specified above after any such modifications are first posted shall constitute Your agreement to such modifications.

**15. Miscellaneous.**

**15.1.** This Agreement (specifically including Ikonik Media's provision of Services and Technology to You under each Ikonik Media Service Agreement) shall be governed by the laws of the State of Colorado. ANY DISPUTES, ACTIONS, CLAIMS OR CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICE SHALL BE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN COLORADO, AND YOU HEREBY CONSENT TO THE PERSONAL JURISDICTION OF SUCH COURTS.

**15.2.** Except as otherwise provided in this Agreement, no waiver, alteration, modification or cancellation of any of the provisions of this Agreement shall be binding on Ikonik Media unless agreed to in writing by Ikonik Media, and no text or information set forth on any document or preprinted form of Yours shall add to or vary the Terms and Conditions of this Agreement.

**15.3.** This Agreement constitutes the entire agreement between You and Ikonik Media concerning the subject matter of this Agreement, and supersedes any prior agreement between the parties. You understand and agree that Services may be provided and payments may be collected by a parent or affiliate of Ikonik Media. In the event that You become in default under or otherwise breach this Agreement, You agree to pay all reasonable expenses (including, without limitation, attorneys' fees and collection agency fees) incurred by Ikonik Media in its enforcement of its rights under this Agreement.

**15.4.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect, and, if such construction is not permissible, such provision shall be deemed severed from this Agreement.

**15.5.** You may not assign this Agreement or any right or obligation hereunder without Ikonik Media's prior written consent.

**15.6.** If either party is prevented from performing any portion of this Agreement (except the payment of money) by causes beyond its control, including labor disputes, civil commotion, war, terrorism, governmental regulations or controls, casualty, inability to obtain materials or services, general Internet connectivity outages, interruptions, or problems occurring at a national, regional or local level, or acts of God, such party shall be excused from performance for the period of the delay and the time for such party's performance shall be extended for a period of time equal to the duration of such delay.

**IKONIK MEDIA, INC**  
**GENERAL TERMS & CONDITIONS OF SERVICE**

Confidential

**15.7.** This Agreement expressly includes all other legal policies available on the Ikonik Media Web Site, all of which are incorporated by reference herein.

**15.8.** Ikonik Media may issue a press release or make a public announcement incorporating, or use, in advertising or publicity, the name, trademarks, or other proprietary identifying symbol of You or Your affiliates.

**16. Definitions.**

“Intellectual Property Rights” means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how, and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of a similar nature anywhere in the world. “Ikonik Media Technology” means all of Ikonik Media’s or Ikonik Media’s licensors’ proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) used by Ikonik Media, or made available to You by Ikonik Media, in providing the Services. “Service(s)” mean, individually and collectively, the Internet-accessible media conversion, asset management and distribution services and other services to be provided hereunder by Ikonik Media as more fully described in a then effective Ikonik Media Service Agreement which has been accepted by Ikonik Media. “User(s)” means any person who accesses or uses in any manner the Services or Ikonik Media Technology by or through Your account or by or through equipment or facilities under Your control.