

TERMS OF USE

This Terms of Use document was published on 1st August 2021.

WE HEREBY EXPRESSLY DRAW YOUR ATTENTION TO CLAUSES 7.9 AND 7.16

1. OVERVIEW AND INTRODUCTION

- 1.1. Whichpik Limited (“Whichpik” or “we” “our Website” and “us”) is a company registered in the United Kingdom and operating from London, United Kingdom. Regarding any issue related and connected to these Terms of Use, we can be contacted at legal@whichpik.com. We will try our best to respond to your emails as soon as possible. Please be informed that we are unable to give legal or compliance advice, we can only give clarifications and explanations.
- 1.2. By using our Website and photo comparison services (the Services), You agree to be bound by these Terms of Use, our Privacy Policy, our Cookies Policy and all other additional policies applicable to the use, functionality and contents of our services. These policies are incorporated by reference. If you do not agree to these terms as contained therein, please do not use our Website or any part of our Services.
- 1.3. These Terms of Use govern and regulate your use of our Website and services, by using our Website, you consent to these terms and are bound by them. Please kindly read these terms carefully. These Terms override any previous communication or agreement with Whichpik in relation to any of our services and Website.

2. DEFINITIONS AND INTERPRETATIONS

As used in this Terms of Use, the following words and terms shall have the meanings ascribed to them below with words in the singular deemed to include those in the plural and vice versa:

- 2.1. **Agreement or Contract** - means your contract for the use of our Services and/or the use of our Website. As regarding your use of Our Services, more details are provided in Clause 3 and Clause

- 2.2. **Account** - means a registered profile needed for access and use of our Services, please see Clause 5 for more details.
- 2.3. **Dashboard or Account Page** - A page on our Website where Users can control their activities on our Website.
- 2.4. **Our Content** - includes those contents provided to Users by Us, which is related to or connected with our products, services and activities on our Website.
- 2.5. **Party** - means either User as defined in 2.11 or Whichpik as defined in 2.14.
- 2.6. **Parties** - means both Users defined in 2.11 and Whichpik as defined in 2.14.
- 2.7. **Website** - Includes all avenues in which our services can be accessed and used. This includes but is not limited to whichpik.com, and any of Our Services, etc.
- 2.8. **Services** - includes anything related to and connected with our photo comparison service and the use of our Website and any other services available on our Website.
- 2.9. **Targeted Audience** - means a User or Users on our Website who is selecting pictures presented in pairs for comparison purposes.
- 2.10. **Terms of Use** - means this “Terms of Use” together with the terms incorporated by reference, all as may be amended, varied or supplemented from time to time by Us in accordance with the provisions of this Terms of Use.
- 2.11. **User or Users** - any User of our Website including but not limited to Website Visitors, or any person using our Services or Website for whatsoever reason.
- 2.12. **User Content** - means any content provided by the persons who fall under the category in 2.11 above.
- 2.13. **Website or Website** - whichpik.com and all of our services.
- 2.14. **Whichpik** - means Whichpik Limited of Kemp House, 152-160 City Road, London EC1V 2NX that can be contacted at legal@whichpik.com.
- 2.15. **You or Your** - means the same thing as “User” as described in 2.11

2.16. References.

Any reference to a statutory provision shall be construed as a reference to:

- 2.16.1. Any statutory modification or re-enactment thereof (whether before or after the date hereof) for the time being in force;
- 2.16.2. All statutory instruments or orders made pursuant thereto; and
- 2.16.3. Any statutory provisions of which that statutory provision is a re-enactment or modification.
- 2.16.4. Any reference to a document or this Terms of Use shall include a reference to any amendment, replacement, notation or supplement to that document or this Terms of Use but excluding any amendment replacement, notation or supplement made in breach of this Terms of Use.
- 2.16.5. Any reference to a party, (who can either be Users or Whichpik collectively and individually) to this Terms of Use includes a reference to that Party's successors and permitted assigns.
- 2.16.6. Paragraph headings are inserted for ease of reference and convenience and shall not be construed as forming part of this Terms of Use or used in the interpretation of any Article hereof.
- 2.16.7. Words denoting the singular shall include the plural and vice versa.
- 2.16.8. Words denoting persons shall include corporations, partnerships, sole traders firms and organisations and vice versa.
- 2.16.9. Words denoting any gender shall include all genders.

3. OUR SERVICES

- 3.1. We are a photo comparison platform focused on allowing users conduct photo comparisons with human input.

- 3.2. To access our services, you must have an account.
- 3.3. Access to the Website is on an “as available” basis. You acknowledge that the Website is an evolving one and that the form and nature of the Website, including the Services, may change from time to time. Whenever we are making a reasonably significant change, we will take steps to inform you about the changes.
- 3.4. We will take all reasonable steps to ensure that access to our Services is available at all times. However, we reserve the right to carry out an upgrade or restrict access to our services for a period of time for maintenance and other purposes. You agree that we do not bear any liability from any loss of data, business opportunity or Content due to the scheduled maintenance, unplanned outages or malfunctioning of our Website.
- 3.5. You hereby agree that neither our Service, our Website, nor any part of our Website constitutes advice or suggestion. They are just general information put out for information purposes only.
- 3.6. We make no representation, warranty, or guarantee that our Website or Service will meet your requirements, that it will be fit for a particular purpose, that it will not infringe the rights of third parties, that it will be compatible with all software and hardware, or that it will be secure. We will take reasonable steps to ensure that our Content and Service is functional and that it works; however, we do not make any express or implied warranty, guarantee or representation that it will be functional and up to date. We are not responsible for any user content and those content do not reflect our opinion or values

4. THE USE OF OUR WEBSITE

4.1. How our Services and Website Works

- 4.1.1. When you register an account on our Website, you are allowed to upload several pictures for comparison. You are provided with a link to provide to your target audience for selection from your uploaded pictures.
- 4.1.2. To ensure adequate and increased human interactions on your uploaded pictures, after any number of rounds of picture comparison done on your uploaded pictures by

your targeted audience, we will make available another random users' pair of pictures for a round of selection. This will be repeated indefinitely till all your pictures have been compared by the targeted audience. In the same vein, when other users' targeted audience are comparing pictures on our Website, your pictures might also be provided to them for human input.

4.1.3. The results on comparison and selections made on your uploaded pictures will be made available to you on your Dashboard/ your Account Page.

4.1.4. We reserve the right to reject the uploading of a picture for not satisfying our requirements and parameters.

4.2. Permitted Use of Our Service

4.2.1. Users are only allowed to use our Service in a legal and fairway. Usage should only be in a manner that protects our intellectual property and our commercial interests.

4.2.2. In the use of our Services, You as a User warrant as follows:

4.2.2.1. that you are 18 years or older;

4.2.2.2. that you will not post nude pictures, partially nude pictures, sexually suggestive pictures or any picture that is obscene, discriminator, threatens, impersonate or intimidate another person;

4.2.2.3. that you will not use our Services for illegal purposes;

4.2.2.4. that you will comply with all local laws regarding the use of our Services or related internet use;

4.2.2.5. that you will not crawl, scrape, download or take any User content, including but not limited to profiles and uploaded pictures.

4.2.2.6. infringes our or another person's intellectual property or proprietary rights;

- 4.2.2.7. that you will not insinuate or portray association or connection with us, including but not limited to the use of our logo, trademark or name without our express written permission;
- 4.2.2.8. that you will not upload explicit contents, illegal contents, discriminatory or hateful contents.
- 4.2.2.9. that you will not facilitate illegal or criminal activities;
- 4.2.2.10. that you will not infringe on the privacy and/or rights of another person; and
- 4.2.2.11. that you will not upload contents that discriminate against, or is in any way defamatory of, any person, group or class of persons, race, sex, religion, nationality, disability, sexual orientation, or age.
- 4.2.3. If you discover that any User is breaching the aforementioned provisions of 4.2.2, every comparison round has an “inappropriate” flag button for Users to inform us. Please do not hesitate to use the said button.
- 4.2.4. You agree to not attempt to gain unauthorised access to any part of our Website, the server on which our Website is stored, or any other server, computer, or database connected to our Website. You agree that you will not deliberately introduce viruses or other malware, or any other material which is malicious or technologically harmful either to or via our Website, or attack our Website by any means
- 4.2.5. By using the Services, you agree to indemnify, hold harmless and defend Us, our subsidiaries, affiliates, shareholders, officers, directors, agents, licensors, suppliers, other partners, employees, and representatives from any claims, damages, losses, liabilities, and all costs and expenses of defence, including but not limited to, attorneys' fees, resulting directly or indirectly from a claim by a third party that arises in connection with Your use of the Services, including but not limited to (a) acts and/or omissions on or off the Website; (b) violation of any rights of another, including without limitation any alleged infringement of intellectual property or other right of any person or entity relating to the Website; (c) breach of these Terms; (d) use and/or misuse of the Website, including without limitation any information, Content

and/or materials thereon; (e) violation of any applicable law or regulation; (f) inaccurate, untimely, incomplete or misleading User information, including without limitation with respect to registration, profile or eligibility; (g) misstatements and/or misrepresentations; (h) use of links to third party websites, including without limitation such websites' availability, Terms of Use, privacy policy, information, Content, materials, advertising, products and/or services; (i) User information and any acts or omissions with respect to such User information; (j) use of any information in third-party reports; (k) use of third-party payment processing services; (l) use of phone support services; and/or (m) use of any services or products or any contracts or arrangements made or provided based on information, Content and/or materials obtained on or through the Website. You further agree that you will cooperate as requested by Us in the defence of such claims. We reserve the right, at our own expense, to assume the exclusive defence and control of any matter otherwise subject to indemnification by Users, and you shall not in any event, settle any claim or matter on our behalf without our written consent.

4.2.6. You must not engage in activities that are detrimental to our Website or its functionality. You shall not take actions to bypass our security measures or gain unauthorised access to our Content or any other User's Content, reverse engineer or take apart our Services or Website.

5. YOUR ACCOUNT AND SECURITY OF YOUR ACCOUNT

- 5.1.** To use our Services, you need to have opened an account with us.
- 5.2.** You agree that are responsible for any content uploaded on our Website or the use of your account in any way, manner or form;
- 5.3.** We collect selected information when registering an account with us. The safety and protection of your information are managed in accordance with our Privacy Policy.
- 5.4.** You are obligated to provide accurate and complete information when registering an account on our Website or when interacting with us through any means whatsoever. It is your responsibility

to provide accurate information to us at all times. You must ensure that your account is updated and accurate at all times. You are responsible for your account.

- 5.5.** The confidentiality of your account and its activities are your sole responsibility. Any suspicion of any unauthorised use of your account should be reported to us immediately by sending an email to legal@whichpik.com. Whichpik is not liable for any loss or damages from any unauthorised use of your account by another person. You agree to notify us immediately of any unauthorised use of your password or account or any other breach of security. We cannot and will not be liable for any loss or damage arising from your failure to protect your password or account.
- 5.6.** As a User, you hereby represent that you are not impersonating another person or being fraudulent. You undertake that you will not use anyone else's account or solicit, collect or use the login credentials of other Users.
- 5.7.** As a User you must refrain from carrying out criminal activities with your account , violate any law, breach a contract or a legal duty, offer illegal rewards, violate our Terms of Use and all our other policies.
- 5.8.** You agree to not share your account (or account details) with anyone else, or sell, transfer, license or assign your account or any account rights to third parties.
- 5.9.** Should your account be banned by Us, you are not entitled to create a new account to access the Website, we will only grant you the permission to create a new account at our discretion.
- 5.10.** We reserve the discretion and right to terminate, monitor, suspend, delete or ban the account of any User on our Website. We have no obligation to give any reason or explanation for such action. We take these actions for the benefit of our Website.
- 5.11.** Users can delete their account and thereby permanently terminate their access to our Services by sending us an email at legal@whichpik.com. Please note that deleting your account does not delete your Content. We may need to keep certain Users' contents for business reasons and legal compliance purposes. Please read our privacy policy for more information.
- 5.12.** You agree that we are not responsible for any loss or damages arising from the failure to comply with clause 5.1 - 5.9 above. We may terminate, suspend or take any action against your account for violation of any Terms of Use.

6. INTELLECTUAL PROPERTY MATTERS

- 6.1. **WHICHPIK'S Intellectual Property** – Our Content, Service, trademark and everything on our Website are protected through various intellectual property laws including but not limited to copyright, trademark and all other available protections under the Laws of the United Kingdom.
- 6.2. By using our Website, you covenant that you will respect our intellectual property and not adapt it or create derivative works off our contents. We only grant you a limited, temporary, non-exclusive, non-transferable right to use and access our Content. You cannot and should not reproduce, redistribute, transmit, assign, sell, broadcast, rent, share, lend, modify, adapt or copy any of the Content on our Website unless you get written permission from us.
- 6.3. You shall not take actions to bypass our security measures or gain unauthorised access to our Content, reverse engineer or take apart our Services or Website.
- 6.4. We have the right and discretion to limit or revoke this limited license to use.
- 6.5. **Users' Intellectual Property** - You agree that you will be totally responsible for all the User Content you create or upload to our website. You warrant that you have the right to create or upload the User content and that you have the right to all materials contained therein. You also warrant that it is in line with our Permitted Use of Service as stated in Clause 4.2.
- 6.6. We do NOT claim ANY ownership rights in any user Content that you post on our Website. All User Content and the intellectual property rights subsisting therein, unless specifically labelled otherwise, belongs to or has been licensed by the User. All User Content is protected by applicable United Kingdom and international intellectual property laws and treaties. Users may not copy, distribute, publicly perform, publicly display, reproduce or create derivative works based upon another User's Content without first obtaining the express consent of the User to whom the User Content in question belongs.
- 6.7. You agree that you will be liable to Us to the extent permissible by law for the breach of the warranties in this Clause 6.5 and 6.6. You will be responsible for any damages to Us or any third Party for the breach of the warranties in Clause 6.5 and 6.6

- 6.8. You grant a non-exclusive, global, no borders, perpetual, irrevocable, royalty-free, sub-licensable, and transferable right to use of User's Consent to US who can exercise, commercialise, and exploit the copyright, publicity, trademark, and database rights with respect to your Content. Also, in conjunction with the exercise of such rights, you grant us the right to identify you as the author of any of your Content by name, email address or screen name as we deem appropriate.
- 6.9. You hereby also grant us the right to edit, amend, make changes, translate, format or even delete any Users' Content as it deems necessary and appropriate.
- 6.10. You covenant, represent and warrant that they have the right and licence to confer the rights in 6.8 and 6.9 on Us. You also warrant that they have not infringed on any third party's (intellectual, privacy, human, proprietary, confidentiality or any other rights) rights.
- 6.11. As a User, you further warrant that We are not required to obtain any license, consent, make any payment or obtain any permission from any third party to use any of your Content on our Website. You agree that We do not have any liability for the use of any of your content.

7. MISCELLANEOUS PROVISIONS

- 7.1. **Third Party Content** - We may provide links to other content such as websites, Services and apps. Unless expressly stated, this content is not under Our control. We neither assume or accept responsibility or liability for such third party content. The provision of a link by Us is for reference only and does not imply any endorsement of the linked content or of those in control of it. Please make sure you read the Terms and Conditions as well as other relevant Policies of these Third Parties.
- 7.2. **Severability** - In the event that any provision of this Terms of Use is held to be invalid or unenforceable in whole or in part, all other provisions will continue to be valid with the invalid and unenforceable parts severed from the remainder of this Terms of Use.
- 7.3. **Relationship Of The Parties** - This Terms of Use is intended and shall be construed as creating an Agreement for the purposes specified in this Terms of Use. Nothing in this Terms of Use or otherwise is intended or shall be construed as creating a partnership other than as specifically set out in this Terms of Use or any legal entity between the Users and Whichpik or any ongoing or

continuing relationship or commitment between the Users of Whichpik, other than as specifically set out in this Terms of Use.

- 7.4. **Unsolicited Idea** – You agree that all unsolicited comments and advice are non-confidential and non-proprietary. An irrevocable, worldwide, transferable and royalty-free license to use, exploit, distribute and display the unsolicited advice or communication is hereby granted to Us
- 7.5. **Communications** - Unless otherwise stated in this Terms of Use or any other relevant part of our Website, all notices and other communications shall be in writing and delivered by electronic mail. For Whichpik, the applicable email address is legal@whichpik.com unless another email address is provided on the relevant page on our Website or this Terms of Use. For a User, the email address will be the email address provided when registering for an account or contacting us.
- 7.6. **Indemnity** – You agree to indemnify and hold harmless Whichpik, its successors and assigns, from and against all losses, costs and other damage caused by you, his/her profile or any activity that is related or connected to the use of our Website.
- 7.7. **Waiver** - No single or partial exercise of a right or remedy provided by this Terms of Use or by law prevents the further exercise of the right or remedy or the exercise of another right or remedy. A waiver of a breach of this Terms of Use does not constitute a waiver of a subsequent or prior breach of this Terms of Use.
- 7.8. **Amendment** - We may update these Terms of Use from time to time by publishing a new version on our Website. The right to amend is at our sole discretion. You should check this page occasionally to ensure you understand any changes to this Terms of Use. At our discretion, we may notify you of changes to this policy by email or through email or any other choice of communications as set by you.
- 7.9. **DISCLAIMER** - OUR WEBSITE IS PROVIDED "AS IS" AND WE AND OUR DIRECTORS, EMPLOYEES, CONTENT PROVIDERS, AGENTS AND AFFILIATES EXCLUDE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. WE WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM THE USE OF OUR WEBSITE OR OUR CONTENT, OR THE UNAVAILABILITY OF THE SAME, INCLUDING,

BUT NOT LIMITED TO LOST PROFITS, AND DIRECT, INDIRECT, INCIDENTAL, PUNITIVE AND CONSEQUENTIAL DAMAGES. WE DO NOT WARRANT THAT OUR WEBSITE WILL BE UNINTERRUPTED OR WITHOUT ERROR. YOU, NOT US, ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION DUE TO YOUR USE OF OUR WEBSITE OR CONTENT. WE MAKE NO WARRANTY THAT OUR WEBSITE OR CONTENT IS FREE FROM INFECTION BY VIRUSES OR ANYTHING ELSE THAT HAS CONTAMINATING OR DESTRUCTIVE PROPERTIES. WE WILL USE REASONABLE EFFORTS TO ENSURE THE ACCURACY, CORRECTNESS AND RELIABILITY OF OUR CONTENT, BUT WE MAKE NO REPRESENTATIONS OR WARRANTIES AS TO OUR CONTENT'S ACCURACY, CORRECTNESS OR RELIABILITY.

- 7.10. **Governing Law** - These Terms of Use, the jurisdiction clause contained in it and any non-contractual obligations arising out of or in connection with it or its subject matter or formation are governed by, construed and take effect in accordance with the law of England and Wales.
- 7.11. **Dispute Resolution** - Notwithstanding the provisions of 7.12 for any and all grievances, disputes, claims, or controversies you may have against Whichpik ("Disputes"), before pursuing any dispute resolution avenue, you must first give us an opportunity to resolve the Dispute informally by sending an email to legal@whichpik.com with the subject "**Pre-Action Contact Communication**". The email should contain your name, your email address as registered on your account (if you have no account, please state that), a detailed description of your grievance and claims, and a description of the specific relief you seek and how we can resolve this grievance. If we do not resolve the Dispute within fifty-five (55) days after receiving your Pre-Action Dispute Notice, then you may pursue resolution of the Dispute in accordance to 7.12.
- 7.12. Subject to 7.11, the parties agree that any dispute arising out of or in connection with this Terms of Use or the performance, validity or enforceability of it will be finally resolved by the courts of England and Wales, who have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.
- 7.13. **Class Action Waiver** – The Parties agree that any proceedings to resolve or litigate any dispute will be conducted solely on an individual basis. Neither Party will seek to have any dispute heard as a class action, a representative action, a collective action, or in any proceeding in which either Party

acts or proposes to act in a representative capacity. The Parties further agree that no proceeding will be joined, consolidated, or combined with another proceeding without the prior written consent of the Parties, and all other parties to any such proceeding.

- 7.14. **Third Party Provisions** - We may transfer (assign) Our obligations and rights under these Terms and Conditions (and under the Contract, as applicable) to a third party (this may happen, for example, if We sell Our business). If this occurs, you will be informed by us in writing. Your rights under these Terms and Conditions will not be affected and Our obligations under these Terms and Conditions will be transferred to the third party who will remain bound by them. As a User you may not assign or transfer these Terms in whole or in part to any third party. These Terms shall bind to the benefit of the parties to these Terms and their respective successors, permitted transferees, and permitted assigns.
- 7.15. **Warranty** - We have no fiduciary duty to You. Our Website, services, Content, User Content, and any other related materials are provided on an "as is" and "as available" basis without any warranties of any kind, express or implied. This no warranty includes but is not limited to implied warranties of merchantability, quality or fitness for a particular purpose, non-infringement or Course of performance. This no-warranty clause is exercisable to the fullest extent permissible by the law. The use of our Website and services, including without limitation any services provided on any third-party Website, are entirely at your own risk.
- 7.16. **LIMITATION OF LIABILITY** - TO THE EXTENT PERMISSIBLE BY LAW, IN NO EVENT SHALL WE, OUR DIRECTORS, MEMBERS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY DIRECT, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS OR LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF OUR WEBSITE, THE SERVICES, OUR CONTENT OR THE MATERIALS CONTAINED IN OR ACCESSED THROUGH OUR WEBSITE, INCLUDING WITHOUT LIMITATION ANY DAMAGES CAUSED BY OR RESULTING FROM RELIANCE BY USER ON ANY INFORMATION OBTAINED FROM US, OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR EMAIL, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT RESULTING FROM ACTS OF GOD, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION OR UNAUTHORISED ACCESS TO OUR RECORDS, PROGRAMMES OR SERVICES. IN NO EVENT SHALL

OUR AGGREGATE LIABILITY, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, ARISING OUT OF OR RELATING TO THE USE OF OUR WEBSITE EXCEED ANY COMPENSATION YOU PAY, IF ANY, TO US FOR ACCESS TO OR USE OF OUR WEBSITE.

- 7.17. **Confidentiality** - Except to the extent required by law, any legal or regulatory authority of competent jurisdiction or, with the prior written consent of the other Party. No party shall use or disclose to any third party such information belonging to the other Party. This paragraph shall survive the termination of this Terms of Use. For the avoidance of doubt, Personal Information shall be treated in accordance with Applicable Laws and shall not be considered “confidential information” belonging to a party.
- 7.18. The terms in these Terms of Use survive the usage of the Website. Even after termination or deletion of your account on our Website or the discontinuing of your use of our services for whatsoever reason, either by your choice or our choice, the terms in this Terms of Use continue to apply post-use and termination.

8. CONTACTING US

- 8.1. You can reach us by sending an email to legal@whichpik.com. You can also contact us through our registered address, Kemp House, 152-160 City Road, London EC1V 2NX. Please address your correspondence to Whichpik Limited.