

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

25-609

SAP Number

County Administrative Office

Department Contract Representative	Christian Garcia
Telephone Number	909-386-8069
Contractor	Blackmagic Design Pty. Ltd. (DaVinci Resolve)
Contractor Representative	
Telephone Number	
Contract Term	Indefinite until terminated
Original Contract Amount	\$295
Amendment Amount	
Total Contract Amount	\$295
Cost Center	1371201000
Grant Number (if applicable)	

Briefly describe the general nature of the contract: Blackmagic Design Pty. Ltd. Terms and Conditions of sale, including non-standard terms, for the use of DaVinci Resolve software which provides a comprehensive, AI-enhanced post-production suite.

FOR COUNTY USE ONLY

Approved as to Legal Form

▶ Julie A. Smith
County Counsel

Date 7/28/25

Reviewed for Contract Compliance

▶ _____

Date _____

Reviewed/Approved by Department

▶ _____

Date _____



Blackmagic Cloud

Blackmagic Cloud Terms and Conditions

Last updated: 28 February 2025

PLEASE READ THIS DOCUMENT CAREFULLY BEFORE YOU ACCESS OR USE THE BLACKMAGIC CLOUD PRODUCT, SOFTWARE, SERVICES AND WEBSITES (COLLECTIVELY REFERRED TO AS THE "SERVICE"). BY ACCESSING AND USING THE SERVICE, YOU AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT WISH TO BE BOUND BY THESE TERMS, PLEASE DO NOT ACCESS OR USE THE SERVICE.

Blackmagic Design Pty Ltd ACN 098 098 287 (Blackmagic, we, us and our) has created, owns and operates the Service. The Service allows you to store, upload and share content created by you in, and collaborate with other authorised users of, the Service. Your access to and use of the Service is governed by these Terms of Use (Terms). Our [Privacy Policy](#) explains how we deal with personal information that we collect from you in the course of your access to and use of the Service.

A. Your Agreement with Blackmagic

- 1. Your Agreement.** These Terms govern your access to and use of the Service and except as set out below, your access to and use of information, documents and other materials obtained through the Service (including any and all information, software, artwork, text, video, audio, pictures and other content owned by us and by our licensors and made available to you through the Service) (**Service Material**). By accessing the Service, you acknowledge that you have read and understood these Terms and agree to be legally bound by them. Where you access the Service on behalf of your organisation: (a) you represent and warrant that you are authorised to agree to these Terms on behalf of your organisation and to legally bind your organisation to these Terms; and (b) your organisation must ensure that all officers, employees, agents and contractors of your organisation who access and/or use the Service also comply with these Terms.
- 2. Additional Terms.** These Terms relate to the Service for use with Blackmagic's software applications are additional to, and do not restrict or limit in any way, the terms and conditions of those Blackmagic software applications. Additional terms and conditions may apply to your access and use of the Service. Such additional terms and conditions will be notified to you and shall apply to your access to and use of the Service and shall be incorporated into and form part of these Terms (save that if there is any inconsistency between the additional terms and conditions and any other part of these Terms, the additional terms and conditions shall prevail to the extent of any inconsistency with the other part of these Terms). The additional terms are also subject to change as described in clause 3 below.
- 3. Modification to these Terms.** We reserve the right to amend, update, modify or replace these Terms by notification to you from time to time. Any such change to these Terms will not apply retroactively, and any changes made to the Terms will take effect proactively, from the date of the notification. You acknowledge and agree that you are responsible for reviewing these Terms from time to time to ensure that you are familiar with, have read and understood the current version of these Terms.
- 4. Jurisdiction.** These Terms are governed by the law applying in the State of Victoria, Australia. Each party submits to the non-exclusive jurisdiction of the courts of the State of Victoria and the division of the Federal Court of Australia in that jurisdiction, and the courts of appeal from them. Each party irrevocably

waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

B. Your Account

5. **Blackmagic ID.** To obtain access to and be able to use the Service, you must first establish an account and register a Blackmagic ID for that account. Your account and Blackmagic ID may also enable you to use and access other services and software of Blackmagic made available from time to time. You must enter your Blackmagic ID and password to authenticate your account to be able to access and use the Service.
6. **Account information.** You are responsible for providing up to date and accurate information when you set up an account and register a Blackmagic ID and for updating such information to ensure that it remains up to date and accurate at all times. Failure to provide or maintain accurate and up to date information in relation to your account may result in suspension or termination of your account. Where required, you agree to Blackmagic storing and keeping your account information for the purposes of providing you the Service, including maintaining your access to the Service and billing fees to your account.
7. **Using your account.** You are solely responsible for all conduct and activity which occurs through your account and Blackmagic ID. You should ensure that you keep your Blackmagic ID and password safe and secure and you should ensure that you install appropriate antivirus and malware protection software for your devices through which you are accessing and using the Service. You agree to immediately notify Blackmagic of any security breach of your account. To the maximum extent permissible by applicable law, Blackmagic excludes any liability for any loss arising out of unauthorised access to or use of your account.
8. **No right of survivorship.** Except to the extent required by law, your account and Blackmagic ID is non-transferable and any rights to your account, your Blackmagic ID and your User Data (as defined below) in relation to your account terminate upon your death.
9. **No transfer.** You must not, and are not permitted to, lend, rent, assign, sell or otherwise transfer your account or Blackmagic ID to any third person.

C. Requirements for the Service

10. **Age.** If you are under 16, you must have your parent or guardian's permission to register a Blackmagic ID and access and use the Service. Please have your parent or guardian read these Terms with you. If you are a parent or guardian, and you allow your child to use the Service, then these Terms apply to you and you are responsible for your child's activity on the Service.
11. **Devices.** The Service may be limited to certain compatible devices or require certain minimum operating requirements, which may change from time to time. The Service may also require internet access, access to certain software (to which fees may apply) and updates from time to time. You are solely responsible for ensuring that you meet these requirements. Blackmagic reserves the right to limit the number of Blackmagic IDs which can be associated with a particular device and the number of devices which can be associated with a particular Blackmagic ID.

D. Using the Service

12. **Personal use.** You acknowledge that the Service is designed and intended for personal use and on an individual basis only. You must not share your account and Blackmagic ID or otherwise authorise or permit any third person to use your account and/or Blackmagic ID. You must not use any third person's account or Blackmagic ID to access or use the Service.
13. **Storage.** Your account may be subject to storage and/or bandwidth limitations. You must not exceed any applicable storage and/or bandwidth limitations which apply to your use of the Service. Exceeding such storage and/or bandwidth limitations may lead to suspension or termination of your account and access to the Service.
14. **Updates.** Blackmagic may, in its sole discretion and from time to time, update the Service, including to resolve bugs, install patches, improve functionality, incorporate new features, provide new releases and make corrections. Any such updates will not limit or otherwise affect these Terms. While Blackmagic will use reasonable endeavours to ensure that any updates to the Service will result in limited downtime, Blackmagic does not represent or guarantee that any update will function properly or that the provision of updates will not lead to extended downtime of the Service. In certain circumstances, you may be required to install updates to Blackmagic software applications or third party software applications, which are used with the Service, in order to continue to use the Service.
15. **Availability.** Blackmagic does not represent or guarantee that the Service, or any particular feature of the Service, will be available in all countries, in any particular location or in any particular language. Blackmagic does not represent or guarantee that the Service, or any particular feature of the Service, will be available or is appropriate for use in any particular location.
16. **Changes to the Service.** Blackmagic reserves the right to change, modify or disable the Service or any features of the Service at any time without any liability to you. Where such change, modification or disabling will result in a material adverse change to the Service, Blackmagic will use reasonable endeavours to provide you with at least thirty (30) days notice unless Blackmagic is unable to do so, or it would be unreasonable to do so, due to circumstances beyond its reasonable control including changes required to meet legal or regulatory requirements, to address security issues, to ensure technical integrity or availability of the Service or as result of any force majeure event.
17. **Grant of Rights.** Subject to your compliance with these Terms, we grant to you the right to access and use the Service, and to download certain Service Material that is made available by us for download, solely for your own internal use. Except as expressly permitted under these Terms (or as reasonably contemplated by the normal use of the Service or the Service Material) or expressly as authorised under applicable law, you must not misuse the Service or the Service Material including, without limitation, doing any of the following:
 - 17.1 license, sub-license, sell, re-sell, distribute or otherwise commercially exploit the whole or any part of the Service and Service Material;
 - 17.2 modify, copy, reproduce republish, transmit or distribute or make derivative works based on the whole or any part of the Service or the Service Material;

- 17.3 reverse engineer, reverse compile or otherwise access the Service or Service Material in order to build a competitive product or service; or
- 17.4 attempt to do any of the foregoing, or procure, permit or assist any other person to do, or to attempt to do, any of the foregoing.
18. **No other use.** YOU MUST ONLY USE THE SERVICE IN ACCORDANCE WITH THESE TERMS. ANY USE OF THE SERVICE OR ANY FEATURES OF THE SERVICE, EXCEPT USE AS PERMITTED OR AUTHORISED UNDER THESE TERMS, IS STRICTLY PROHIBITED. SUCH OTHER USE MAY INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF OTHER PARTIES AND MAY BE SUBJECT TO CIVIL AND/OR CRIMINAL PENALTIES.
19. **Feedback.** Blackmagic may from time to time provide the option for users to submit feedback in relation to the Service, including to provide suggestions or ideas, or to report bugs or issues with the Service. You irrevocably grant to us (and to our affiliates) a non-exclusive, fully paid up, worldwide and perpetual licence (including the right to grant sub-licences) to reproduce, use and to otherwise exploit any such feedback and you irrevocable waive any rights of attribution or any other acknowledgement in relation to such feedback.
20. **Beta releases.** Blackmagic may from time to time, offer, designate or otherwise provide the Service, or a feature of the Service, as a pre-release or beta version (**Beta Release**). Such Beta Release is provided solely for the purpose of evaluation on an "as is" basis and no guarantees or warranties whatsoever are provided in relation to the usability or efficacy of the Beta Release or that the Beta Release does not contain bugs or errors which may cause system or other failure or corruption or loss of data. Participation in evaluating any Beta Release is voluntary. You acknowledge and agree that your participation in evaluating any Beta Release is entirely at your sole risk and that you are responsible for any and all costs associated with your participation. Blackmagic strongly advises that you backup all information and data on your device prior to evaluating any Beta Release.
21. **Trade compliance.** The Service is subject to laws, restrictions and regulations in the United States and other jurisdictions as they relate to import, re-import, sanctions, anti-boycott, export and re-export control laws and regulations and which may prohibit us from or otherwise require us to cease providing the Service to you at any time without notice. By using the Service, you agree to comply with all such laws, restrictions and regulations and warrant that you are not prohibited from receiving or accessing the Service by the laws of any jurisdiction.

E. User Content

22. **Content.** In these Terms, "Content" means any and all data, material and information, including audio files, video files, image files, messages including those transmitted through any chat feature on the Service, other electronic files and metadata, that you upload, store, import into, create, generate through or otherwise share with the Service, or Blackmagic software applications used with the Service, in connection with, or through your use of, the Service. We reserve the right to restrict access to or remove any Content at any time. You acknowledge that you may encounter Content of third parties through the Service that is, or that you may find is, offensive or objectionable and that you may expose such Content to other users of the Service. You acknowledge and agree that Blackmagic has no control, and does not control, any user Content and does not make any representation as

to, or guarantee, the accuracy, completeness, appropriateness or quality of any Content. You acknowledge and agree that access to and use of any Content of yours or other users of the Service is solely at your own risk.

23. **Prohibited Content.** You must not upload, store, import into, create, generate, transmit or otherwise share any Content through the Service that:
- 23.1 is intentionally false, defamatory, unlawful, invasive of a person's privacy, threatening or harassing or prohibited by any applicable law; and/or
 - 23.2 is abusive, obscene, profane, harmful, hateful or is otherwise objectionable or likely to be objectionable,
- (Prohibited Content). We reserve the right to, but are under no obligation to, remove, modify or otherwise deal with any Prohibited Content or restrict your access to Content and the Service at any time and without liability to you, if any of your Content is determined by us to be Prohibited Content or otherwise in breach of these Terms.
24. **Rights to Content.** You represent and warrant to us that you have all title, rights or licences to copy, reproduce, use and otherwise exploit all Content in connection with your use of the Service and that such copying, reproduction, use and exploitation of the Content will not infringe intellectual property rights or other proprietary rights of a third party.
25. **Ownership.** You retain all rights in and to your Content (subject to any grant of rights under these Terms) and ownership of your Content.
26. **Your data.** Only to the extent necessary to provide the service to you, you irrevocably grant to us (and to our affiliates) a non-exclusive, fully paid up, worldwide and perpetual licence (including the right to grant sub-licences) to reproduce and use all data and material, including your Content, relating to you or generated through your access to and use of the Service (**User Data**) for the purpose of providing the Service to you and to other users. What this means is, for example, we can use your content to manage metadata, sync remote storage, transfer and update proxies, calculate checksums, generate thumbnails for Blackmagic Cloud's user interface, and grant access to those thumbnails when you share your projects with others. You retain ownership of your User Data. We will not use your Content for AI training. We will take reasonable measures to protect your User Data from any misuse, interference and loss, as well as from unauthorised access, modification or disclosure. You represent and warrant to us that you are authorised to provide the User Data to us and that our use of the User Data will not infringe the intellectual property rights or other proprietary rights of any third party.
27. **Backup.** The Service may provide functionality for you to periodically backup your Content. You are responsible for ensuring you have correctly applied and activated any backup settings available through the Service. Blackmagic reserves the right to delete any backups associated with a Blackmagic ID where there has been an extended period of inactivity of that account or where your access to the Service has been terminated under these Terms. **TO THE MAXIMUM EXTENT POSSIBLE UNDER APPLICABLE LAW, BLACKMAGIC PROVIDES NO GUARANTEE OR WARRANTY THAT ANY CONTENT YOU STORE, BACKUP OR ACCESS THROUGH THE SERVICE WILL BE, AND REMAIN, AVAILABLE AT ALL TIMES,**

OR WILL NOT BE SUBJECT TO DIRECT, INDIRECT OR INADVERTENT, LOSS, DELETION, DAMAGE, CORRUPTION OR OTHERWISE REMOVED SUBJECT TO THESE TERMS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BLACKMAGIC EXCLUDES ANY AND ALL LIABILITY AND RESPONSIBILITY FOR ANY SUCH LOSS, DELETION, DAMAGE, CORRUPTION OR REMOVAL OF YOUR CONTENT. You are responsible for ensuring that you maintain and store an appropriate alternative backup of all of your Content.

28. **Sharing.** The Service may provide functionality for you to share your Content with other users or to make such Content public. You represent and warrant to us that you have all title, rights or licences to share your Content in this manner and that such sharing will not infringe the intellectual property rights or other proprietary rights of any third party. You acknowledge that:
- 28.1 you are solely responsible for any Content which you share or make public through the Service;
 - 28.2 that other users of the Service may use, copy, modify or share your Content as shared by you through the Service; and
 - 28.3 you are solely responsible for correctly identifying who you share your Content with through the Service, for monitoring that you have shared your Content with the correct persons and for ceasing any sharing of your Content with any person.
29. **Access to account and Content.** Without limiting Blackmagic's rights under these Terms or under any applicable laws, Blackmagic may take any such steps it deems reasonable or necessary to enforce and/or verify your compliance with these Terms. You acknowledge and agree that Blackmagic may, without liability to you, access, use, disclose, preserve, remove, modify or otherwise deal with your account information or your Content or other User Data, where Blackmagic considers that it is reasonably appropriate or necessary to do so or otherwise to comply with Blackmagic's legal obligations or other applicable laws.

F. User Conduct

30. **Lawful use.** You must only access and use the Service and the Service Material for lawful purposes and in accordance with all applicable laws, including any local laws and regulations which apply in your jurisdiction, relating to access to or use of the Service. You must ensure that your access to or use of the Service and Service Material is not illegal or prohibited by law.
31. **Your obligations.** In accessing and/or using the Service and accessing and/or downloading the Service Material, you must not:
- 31.1 use the Service or the Service Material for any purpose other than as expressly permitted by these Terms;
 - 31.2 use the Service or Service Material in a manner that is illegal or fraudulent or facilitates any illegal or fraudulent activity;
 - 31.3 use the Service or Service Material in a manner that may interfere with, disrupt or create undue or unreasonable burden on the Service or on the servers and networks that host the Service, the Service Material or the

Content of other users; without limiting the foregoing, an undue or unreasonable burden on the Service shall include any level of usage (whether data storage, data egress bandwidth or any other metric of usage) in respect of any part of the Service that exceeds two hundred per cent (200%) of the level of usage of 90th percentile user of that part of the Service;

- 31.4 impersonate or misrepresent yourself as another person;
 - 31.5 access or use the Service or Service Material with the assistance of any automated scripting tool or software other than as provided or expressly permitted by us;
 - 31.6 act in a manner that may diminish or adversely impact our reputation;
 - 31.7 post or otherwise transmit Prohibited Content;
 - 31.8 send impermissible communications not expressly permitted under these Terms such as bulk messaging, auto-messaging or the like;
 - 31.9 post or otherwise transmit material that infringes any third party's intellectual property rights or other proprietary rights;
 - 31.10 post or otherwise transmit materials that contains any malicious software or other programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information;
 - 31.11 use the Service to artificially generate traffic or page links to a website or for any other purpose not expressly permitted under these Terms;
 - 31.12 attempt to penetrate, breach the security or circumvent any access or use restrictions of the Service, or to otherwise interfere with or disrupt the normal functions and performance of the Service; or
 - 31.13 attempt to do any of the foregoing, or procure, permit or assist any other person to do, or attempt to do, any of the foregoing.
32. **Monitoring, revocation or suspension of use privileges.** We reserve the right to, but we are under no obligation to, monitor your use of the Service and Service Material and suspend or terminate your access to or use of some or all of the Service and/or Service Material if you engage in activities that we are reasonably of the opinion do not comply with your obligations in clause 31 of these Terms. Although we do not assume any obligation to monitor any such activities, you acknowledge that we reserve the right to use technology designed to detect and to block inappropriate Content. We reserve the right to request edits to or deletion of any Content that we are reasonably of the opinion do not comply with your obligations in clause 31 of these Terms. To the maximum extent permitted by law, we are not liable or responsible to you for any loss or damage which you incur or claim as a result of our exercise of rights under this clause.

G. Fees and payments

33. **Fees.** Your access to and use of the Service is subject to your payment of all applicable fees as set by Blackmagic from time to time. These fees may include fees based on storage, bandwidth, time, the number of users to whom Content is shared or other metrics as notified by Blackmagic from time to time.
34. **Credit card.** In order to access certain features or functions of the Service, we may require that you link a credit card or other payment method to your Blackmagic ID. We use a third party payment service provider and do not otherwise directly collect or store your payment information. You authorise us to charge your payment method for the fees you incur from your access to and use of the Service.
35. **Payment.** You are responsible for timely payment of any and all fees incurred by you from your access and use of to the Service. Your payment is being made to Blackmagic Design Inc. in the United States and if you are outside the United States this is a foreign transaction. As such you must pay any applicable taxes and third party fees. Please contact your financial institution for questions about any applicable taxes and fees. Blackmagic reserves the right to suspend or terminate your account, including access to the Service and deletion of your User Data and Blackmagic ID, in the event Blackmagic is unable to successfully charge your credit card or other payment method.

H. Intellectual property and Service Material

36. **Intellectual Property.** We, and our licensors, retain full right, title and interest (including all intellectual property rights and other proprietary rights) in and to the Service and the Service Material. Nothing in these Terms should be construed as conferring on you any right to the Service or the Service Material except as expressly granted by these Terms. "Blackmagic", "Blackmagic Design", "DaVinci Resolve" and all product names appearing on the Service are the trade marks of Blackmagic or, where indicated, its licensors. If you use any of our trade marks in reference to us, the Service or Service Material, you must include a statement attributing that trade mark to us. You must not use any of our trade marks or trade marks of our licensors:
- 36.1 in, or as the whole or part of, your own trade marks;
 - 36.2 in connection with any business, products or services which are not ours;
 - 36.3 in a manner which may be confusing, misleading or deceptive to any person; or
 - 36.4 in a manner that disparages us, the Service or the Service Material.
37. **Takedown.** We will respond to complaints of intellectual property infringement consistently with our obligations under law and in accordance with any takedown policy published by us from time to time.
38. **Service Material.** You acknowledge and agree that:
- 38.1 the Service Material is subject to change at any time without notice to you;

- 38.2 we do not represent or guarantee that any specific Service Material will be available or continue to be available and we reserve the right to change or remove any existing Service Material at any time;
- 38.3 the Service Material may include materials the rights in which are owned by third party licensors and which are made available by us through the Service under licence by the third party to us;
- 38.4 you are solely responsible for use of any Service Material and you should make your own enquiries to check if the Service Material is accurate, complete and suitable for your intended use;
- 38.5 we are not liable to you for any loss, damage or liability (of any kind) for any errors or omissions in the Service Material;
- 38.6 we are not liable for any loss, damage or liability (of any kind) arising out of or in connection with your access to or use of the Service Material, including your reliance on the Service Material; and
- 38.7 we expressly reserve all rights (including intellectual property rights) owned or licensed by us in the Service Material, subject only to the limited licence to access and to use the Service Material in accordance with clause 17 of these Terms.

I. Termination

- 39. **Termination by you.** You may cease using the Service at any time, including by deleting your account and Blackmagic ID. You are responsible for retrieving your Content prior to ceasing your use of the Service. Termination does not relieve you of your obligation to pay any outstanding fees which have accrued prior to termination.
- 40. **Suspension and termination by us.** We reserve the right to suspend or terminate your access to and use of the Service in our sole discretion. Where we suspend or terminate your access to and use of the Service without cause, we will use reasonable endeavours to provide you with at least thirty (30) days notice with instructions to retrieve your Content. We may otherwise immediately suspend or terminate these Terms and/or your access to and use of the Service, and without liability to you for any loss of your Content, where:
 - 40.1 you breach a provision of these Terms (or act in a manner that demonstrates you are unable to, or do not intend to, comply with these Terms);
 - 40.2 you access or use the Service in a fraudulent or unlawful manner, including uploading, storing, sharing or creating Prohibited Content;
 - 40.3 you access or use the Service for fraudulent or illegal activities;
 - 40.4 you harass, abuse or threaten to harass or abuse us or other users of the Service;
 - 40.5 we are required to do so by law;

- 40.6 there are unexpected technical or security problems or issues with the Service;
 - 40.7 we elect to discontinue the Service, in whole or in part;
 - 40.8 you fail to pay any fees owed in relation to your use of the Service; or
 - 40.9 your account has been inactive for an extended period of time.
41. **Effect of termination.** Blackmagic will take such steps and actions it considers reasonably necessary to delete your User Data upon termination. Notwithstanding the foregoing, subject to the terms of our [Privacy Policy](#), Blackmagic reserves the right to retain or store any User Data following termination.
42. **Survival.** Certain provisions of these Terms will survive the termination of these Terms and shall apply indefinitely, these include clauses 4 (Jurisdiction); 8 (No right of survivorship); 25 (Ownership); 26 (Your data); 35 (Payment); 36 (Intellectual Property); 41 (Effect of termination); 42 (Survival); 43 (Links to third party sites); 46 Disclaimer; 47 (Limitation of Liability); 48 (Indemnity); 50 (Notices); 51 (Assignment); 53 (Severance); 54 (Entire agreement).
- J. **Third party sites and services**
43. **Links to third party sites.** The Service and/or the Service Material may contain links or produce search results that reference links to third party websites (**Linked Sites**). We have no control over these Linked Sites or their content and we do not assume responsibility or liability for any content, opinions or materials available on any Linked Site. A reference to a Linked Site should not be construed as Blackmagic's endorsement of the Linked Site or the operator or owner of the Linked Site or their products or services. We do not warrant that a Linked Site is free from harmful or malicious code. By accessing or using the Linked Sites, you agree and understand that such access and use is at your own entire risk. To the maximum extent permitted by law, we are not liable to you and we assume no responsibility to you for any loss, damage or liability (of any kind) as a result of your visit to or reliance on the content of a Linked Site.
44. **Third-party services and software.** The Service may include access to third party services and software. You are responsible for ensuring that you comply with any and all terms which apply to such third party services and software. Access and use to any third party services and software are provided for convenience only and you agree and understand that such access and use is at your own entire risk. To the maximum extent permitted by law, we are not liable to you and we assume no responsibility to you for any loss, damage or liability (of any kind) as a result of your access to and/or use of any third party services and software.
- K. **Disclaimer of warranties, limitation of liability and indemnity**
45. **Performance.** The Service may be affected by reasons outside our control, including incompatible devices, poor internet connection or other external factors affecting performance of the Service. While Blackmagic undertakes reasonable endeavours to ensure the Service functions properly and with limited downtime, Blackmagic does not provide any warranties or guarantees in relation to the availability or reliability of the Service.

46. **Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE DO NOT REPRESENT OR WARRANT TO YOU THAT THE SERVICE OR THE SERVICE MATERIAL WILL BE ERROR-FREE OR UNINTERRUPTED OR THAT THEY ARE SUITABLE FOR YOUR INTENDED PURPOSE, OR THAT YOU WILL OBTAIN ANY SPECIFIC RESULTS FROM YOUR ACCESS TO OR USE OF THE SERVICE OR THE SERVICE MATERIAL. WE PROVIDE THE SERVICE AND THE SERVICE MATERIAL TO YOU ON AN "AS IS" AND "AS AVAILABLE" BASIS. WHEN YOU ACCESS THE SERVICE OR THE SERVICE MATERIAL, YOU ACKNOWLEDGE THAT YOU DO SO AT YOUR OWN RISK, HAVING MADE YOUR OWN ENQUIRIES TO CHECK WHETHER THE SERVICE AND THE SERVICE MATERIAL ARE ACCURATE, COMPLETE AND SUITABLE FOR YOUR INTENDED USE. NEITHER WE NOR ANY OF OUR AFFILIATES ARE LIABLE TO YOU FOR ANY LOSS, DAMAGE OR LIABILITY (OF ANY KIND) FOR ANY ERRORS OR OMISSIONS IN, OR YOUR ACCESS TO, USE OF AND RELIANCE ON THE SERVICE OR SERVICE MATERIAL. ALTHOUGH WE USE OUR REASONABLE ENDEAVOURS TO ENSURE THAT THE SERVICE AND THE SERVICE MATERIAL ARE FREE FROM VIRUSES AND OTHER HARMFUL CODE, WE DO NOT REPRESENT OR WARRANT TO YOU THAT ANY MATERIAL THAT YOU ACCESS AND/OR DOWNLOAD FROM SERVICE WILL BE FREE FROM VIRUSES AND FROM OTHER HARMFUL CODE. YOU ACKNOWLEDGE AND AGREE THAT THE INTERNET IS AN INHERENTLY INSECURE MEDIUM, THAT NO DATA TRANSMISSION OVER THE INTERNET CAN BE GUARANTEED AS BEING TOTALLY SECURE AND THAT YOUR DATA TRANSMITTED USING THE SERVICE IS AT YOUR OWN RISK.
47. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER WE NOR OUR AFFILIATES ARE LIABLE TO YOU FOR ANY LOSS, DAMAGE OR LIABILITY OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH YOUR ACCESS TO, USE OF AND RELIANCE ON THE SERVICE AND/OR THE SERVICE MATERIAL. TO THE MAXIMUM EXTENT PERMITTED BY LAW, OUR LIABILITY TO YOU UNDER ANY GUARANTEE, CONDITION OR WARRANTY (INCLUDING, WITHOUT LIMITATION, ANY GUARANTEE, CONDITION OR WARRANTY OF MERCHANTABILITY, ACCEPTABLE QUALITY, FITNESS FOR PURPOSE OR FITNESS FOR DISCLOSED RESULT), OR ANY OTHER RIGHT OR REMEDY, UNDER ANY LEGISLATION OR IMPLIED INTO THESE TERMS BY ANY LEGISLATION (**STATUTORY GUARANTEES**), IS HEREBY EXCLUDED. WHERE WE ARE LIABLE UNDER ANY STATUTORY GUARANTEES, AND ANY LEGISLATION AVOIDS OR PROHIBITS PROVISIONS IN A CONTRACT EXCLUDING OR MODIFYING THE APPLICATION OF, OR EXERCISE OF, OR LIABILITY UNDER, SUCH STATUTORY GUARANTEES, OUR LIABILITY FOR ANY BREACH OF SUCH STATUTORY GUARANTEES SHALL BE LIMITED, AT OUR OPTION, TO EITHER: THE SUPPLYING OF THE SERVICES AGAIN OR THE COST OF HAVING THE SERVICES SUPPLIED AGAIN. YOU ACKNOWLEDGE AND AGREE THAT RELIANCE BY US ON THIS LIMITATION OF LIABILITY IS FAIR AND REASONABLE IN ALL THE CIRCUMSTANCES.
48. **Indemnity.** You agree to indemnify and keep indemnified Blackmagic and its affiliates, and their respective directors, officers, employees, agents, contractors and licensors, from and against any claim or demand, including reasonable legal costs, made by a third party, relating to or arising from:
- 48.1 your use of the Service;
 - 48.2 any Content you upload, store, import into, create, generate through or otherwise share using the Service;

- 48.3 your breach of any provision of these Terms;
- 48.4 any action taken by Blackmagic relating to the enforcement of these Terms or as a result of your breach of these Terms; or
- 48.5 your infringement of the intellectual property rights or other proprietary rights of third parties.

L. General

- 49. **Privacy.** To the extent that we collect any personal information from you during your access to and use of the Service, we will collect, hold, use, disclose and otherwise handle such information in accordance with the *Privacy Act 1988* (Cth) and other data protection laws that may apply to us in other jurisdictions, in the manner as described in our [Privacy Policy](#).
- 50. **Notices.** Blackmagic may provide you with notices or notifications from time to time in relation to the Service or these Terms. Such notices or notifications may be provided by email to your then current email address registered to your account or by posting the notice on the Service and/or our website.
- 51. **Assignment.** These Terms shall not be assignable by you, either in whole or in part. We reserve the right to assign our rights and obligations under these Terms without notice to you.
- 52. **Waiver.** If we waive, in whole or part, any rights available to us under these Terms on one occasion, this does not mean that those rights will automatically be waived on any other occasion.
- 53. **Severance.** Any provision in these Terms which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of these Terms is not limited or otherwise affected.
- 54. **Entire agreement.** These Terms contain the entire agreement between you and Blackmagic in relation to its subject matter and supersedes any other prior agreements between you and Blackmagic in relation to the Service.
- 55. **Contact us.** If you have any questions regarding these Terms, the Service or your dealings with us, please contact us using the following details:
 - Email: support@blackmagicdesign.com
 - Address: 180 Bank St, South Melbourne, 3205, Victoria, Australia
 - Telephone: +61 3 9682 4770
 - Website: <https://www.blackmagicdesign.com/support/>
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