**TERMS OF USE**

You can see our previous Terms of Use [here](https://prisma-ai.com/terms-nov-08-2019.html)

Effective date: March 27, 2020

Welcome to Bammerman Initiative (“**Company**”, “**we**”, “**us**” or “**our**”), a mobile technology company specializing in deep learning-related products. Our goal is to move forward mobile photography creation to the next level using neural networks, deep learning and computer vision technics. We aim to create new ways for people to express their emotions through the camera.

These Terms of Use (these “**Terms**”) apply to all users and others who download, install, access or use (“**Use**” and “**Users**”, “**you**”, as applicable) our mobile application ARCQ Photo Editor (“**ARCQ**” or “**application**”).

These Terms are a binding contract between you and us. By accepting these Terms through Using ARCQ, you are accepting and agreeing to these Terms on behalf of yourself or the entity that you represent in connection with the Use of ARCQ. If you are Using ARCQ on behalf of another person or entity, you represent that you are authorized to accept these Terms on that person’ or entity’s behalf and that such person or entity agrees to be responsible to us if you or the other person or entity violates these Terms.

**By Using ARCQ, you agree to these Terms. If you do not agree to these Terms, including the mandatory arbitration provision and class action waiver in Section 13 (Dispute Resolution; Binding Arbitration), do not Use ARCQ. Your continued Use of ARCQ will confirm your acceptance of these Terms.**

If you have any questions about these Terms or ARCQ, please contact us (for contact information, please, see How to Contact Us Section).

**1. DESCRIPTION OF ARCQ**

ARCQ is an application based software that uses artificial intelligence algorithms to transform your photos into works of art or change the background or foreground, overlay objects with different objects and clone/copy the style or effects from other image. The artificial intelligence algorithms use styles inspired by various famous artists. ARCQ allows you to (i) take photos Using the application or (ii) upload preexisting photos onto the application. You can then apply different stylized filters or effects to the photos. Once you choose a filter or effect, ARCQ’s algorithm runs, transforming the photo. You can then share the photos through social media sites or store them for personal use.

**2. ELIGIBILITY**

**General age limitation**. You must be at least 13 years of age to Use ARCQ. If you are under 18 years of age (or the age of legal majority where you live), you may only Use ARCQ under the supervision of a parent or legal guardian who agrees to be bound by these Terms. If you are a parent or legal guardian of a User under the age of 18 (or the age of legal majority), you agree to be fully responsible for the acts or omissions of such User in connection with ARCQ.

**Age limitation for the European Economic Area (“EEA”) residents**. Due to requirements of the General Data Protection Regulation (“**GDPR**”) you shall be at least 16 years old in order to Use ARCQ. To the extent prohibited by applicable law, we do not allow Use of ARCQ by the EEA residents younger than 16 years old. If you are aware of anyone younger than 16 Using ARCQ, please contact us at privacy@ARCQ-ai.com and we will take reasonable steps to preclude such person from Using ARCQ.

You represent and warrant that you have the full power and authority to enter into this agreement and that in doing so you will not violate any other agreement to which you are a party and that you have not been previously suspended or removed from Using ARCQ. You further agree to Use ARCQ in compliance with all applicable laws. ARCQ is not available to any Users previously prohibited from Using it.

**3. PRIVACY**

Please refer to our [Privacy Policy](https://prisma-ai.com/privacy.html) for information about how we collect, use and disclose information about you when you Use ARCQ. Transfer and storage of information about you, whilst you Use ARCQ, is governed by our Privacy Policy. You acknowledge and agree that your Use of ARCQ is subject to our Privacy Policy.

**4. USER CONTENT**

ARCQ may allow you to create, store and share photos (“**User Content**”). Except for the Company License you grant us below, you retain all rights in and to your User Content, as between you and us.

You grant us a perpetual, irrevocable, nonexclusive, royalty-free, worldwide, fully-paid, transferable, sub-licensable license to use, reproduce, modify, adapt, translate, create derivative works from and transfer your User Content, without any additional compensation to you (the “**Company License**”).

You grant us consent to use the User Content, regardless of whether it includes an individual’s name, likeness or persona, sufficient to indicate the individual’s identity. By Using ARCQ, you agree that your User Content may be used for commercial purposes. You further acknowledge and agree that our use of your User Content for commercial purposes will not result in any injury to you or to any person you authorized to act on your behalf.

You represent and warrant that: (i) you own the User Content stylized by you on or through ARCQ or otherwise have the right to grant the rights and licenses set forth in these Terms; (ii) you agree to pay for all royalties, fees, and any other monies owed by reason of the User Content you stylize on or through ARCQ; and (iii) you have the legal right and capacity to enter into these Terms in your jurisdiction.

You may not create, store or share any User Content that violates these Terms or to which you do not have all the rights necessary to grant us the Company License described above.

We will not be liable to you for any modification, suspension or discontinuation of ARCQ, or the loss of any User Content.

**5. PROHIBITED CONDUCT AND CONTENT**

You will not violate any applicable contract, intellectual property law, any other applicable law or other third-party rights (including the Company rights) or commit a tort, and you are solely responsible for your conduct while Using ARCQ. You represent, warrant and agree that you will not Use ARCQ by uploading the User Content or otherwise (all of the following conduct includes any attempts to perform it):

* To engage in any harmful, fraudulent, deceptive, harassing, threatening, intimidating, predatory, defamatory, obscene, stalking or otherwise objectionable conduct.
* For any commercial purpose or the benefit of any third party or in any manner not permitted by these Terms.
* In any manner that could interfere with, disrupt, negatively affect or inhibit other Users from fully enjoying ARCQ or that could damage, disable, overburden or impair the functioning of ARCQ in any manner.
* To decipher, decompile, disassemble or reverse engineer any aspect of ARCQ, do anything that might discover the source code, bypass or circumvent measures employed to prevent or limit your access to any part of ARCQ.
* To circumvent any content-filtering techniques we employ or to access any feature or area of ARCQ that you are not authorized to access.
* To develop or to Use any third-party applications that interact with ARCQ without our prior written consent, including any scripts designed to scrape or extract data from ARCQ.
* To display, mirror or frame ARCQ, or any individual element within ARCQ, the Company’s name, any Company trademark, logo or other proprietary information without our express written consent.
* To use any meta tags or other hidden text or metadata utilizing the Company’s trademark, logo URL, product or services name without our express written consent.
* To gain unauthorized access to, interfere with, damage, or disrupt any server, computer or database connected to ARCQ.
* For any illegal or unauthorized purpose, or engage in, encourage or promote any activity that violates these Terms.
* To violate any applicable law or regulation.
* To encourage, assist or enable any other party to do any of the foregoing.

You may only share the User Content that is non-confidential and you have all necessary rights to disclose. You may not create, store or share any User Content that:

* Is unlawful, libelous, defamatory, obscene, pornographic, indecent, lewd, suggestive, harassing, threatening, invasive of privacy or publicity rights, abusive, inflammatory or fraudulent.
* Would constitute, encourage or provide instructions for a criminal offense, violate the rights of any person or otherwise create liability or violate any local, state, national or international law.
* May infringe, misappropriate or violate any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any person.
* Contains any private or personal information of any person without such person’s consent.
* Contains any viruses, corrupted data or other harmful, disruptive or destructive files or content.
* Is, in our sole judgment, objectionable or that restricts or inhibits any other person from Using or enjoying ARCQ, or that may expose us or others to any harm or liability of any type.

We have the right to monitor your Use of ARCQ to ensure compliance with these Terms, and to comply with applicable law or other legal requirements. We have the right to investigate violations of these Terms or conduct that affects ARCQ. We may also consult and cooperate with law enforcement authorities to prosecute Users who violate the applicable law.

We reserve the right, in our discretion and at any time, to suspend or discontinue ARCQ, introduce new features or impose limitations on certain features, or restrict access to ARCQ.

**6. LIMITED LICENSE; COPYRIGHT AND TRADEMARK**

ARCQ and the text, graphics, images, photographs, videos, illustrations, trademarks, trade names, page headers, button icons, scripts, service marks, logos, slogans, filters and other content contained therein (collectively, “**ARCQ Content**”) are owned by us or licensed to us and are protected under both United States and foreign laws. Except as explicitly stated in these Terms, we and our licensors reserve all rights in and to ARCQ and the ARCQ Content. You are hereby granted a limited, nonexclusive, nontransferable, nonsublicensable, revocable license to Use ARCQ and the ARCQ Content for your own personal use (“**User License**”); however, such User License is subject to these Terms and does not include any right to: (i) sell, resell or commercially use ARCQ or the ARCQ Content; (ii) copy, reproduce, distribute, publicly perform or publicly display the ARCQ Content, except as expressly permitted by us or our licensors; (iii) modify the ARCQ Content, remove any proprietary rights notices or markings, or otherwise make any derivative uses of ARCQ or the ARCQ Content, except as expressly set forth in these Terms; (iv) use any data mining, robots or similar data gathering or extraction methods; or (v) Use ARCQ or the ARCQ Content other than as expressly provided in these Terms. Any Use of ARCQ or the ARCQ Content other than as specifically authorized herein, without our prior written permission, is strictly prohibited and will terminate the User License granted under these Terms. You will not remove, alter or conceal any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the ARCQ Content.

**7. IN-APP PURCHASES AND SUBSCRIPTIONS**

ARCQ may include virtual services or tools that can be licensed for a fee, typically via in-app purchase (“**Purchased Content**”). You may only use the Purchased Content if you are over 18 years old, and only on a limited, personal, nontransferable, nonsublicensable and revocable basis for non-commercial use only. We reserve the right to manage, regulate, control, modify, or eliminate Purchased Content at any time (and in case of subscriptions, after a specified time under terms of a respective subscription). Upon the Purchased Content being available to you (and in case of subscriptions, after the Purchased Content has been available to you for a specified time under terms of a respective subscription), our obligations to provide the Purchased Content are deemed fulfilled, and we make no representation that the Purchased Content will be available to the purchaser for any length of time (otherwise as may be specified in terms of a respective subscription), nor that ARCQ will continue to support the Purchased Content (otherwise as may be specified in terms of a respective subscription). **SUBJECT TO MANDATORY LEGISLATION, YOU ACKNOWLEDGE THAT WE ARE NOT REQUIRED TO PROVIDE A REFUND FOR THE PURCHASED CONTENT FOR ANY REASON, AND THAT YOU WILL NOT RECEIVE MONEY OR OTHER COMPENSATION FOR THE UNUSED PURCHASED CONTENT, WHETHER YOUR LOSS WAS VOLUNTARY OR INVOLUNTARY**.

**8. FEEDBACK**

We welcome any your feedback, questions, comments, suggestions, ideas, original or creative materials or other information you submit about us or ARCQ (collectively, “**Feedback**”). You can submit Feedback by contacting us (please, see How to Contact us Section). Your Feedback is non-confidential and will become our sole property. We will own exclusive rights, including, without limitation, all intellectual property rights, in and to your Feedback and will be entitled to the unrestricted use and dissemination of your Feedback for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

**9. INDEMNIFICATION**

To the fullest extent permitted by applicable law, you will indemnify, defend, and hold harmless us and each of our respective officers, directors, agents, partners and employees (individually and collectively, “**Company Parties**”) from and against any loss, liability, claim, demand, damages, expenses or costs (“**Claims**”) arising out of or related to (i) your Use of ARCQ; (ii) your User Content or Feedback; (iii) your violation of these Terms; (iv) your violation, misappropriation or infringement of any rights of another (including intellectual property rights or privacy rights), and (v) your conduct in connection with ARCQ. You agree to promptly notify the Company Parties of any third party Claims, cooperate with the Company Parties in defending such Claims and pay all fees, costs and expenses associated with defending such Claims (including, but not limited to, attorneys’ fees). You also agree that the Company Parties will have control of the defense or settlement of any third party Claims. This indemnity is in addition to, and not in lieu of, any other indemnities set forth in a written agreement between you and us or the other Company Parties.

**10. DISCLAIMERS**

We do not control, endorse or take responsibility for any User Content (and its loss) or third-party content available on or linked to ARCQ. You acknowledge sole responsibility for and assume all risk arising from your use of any third-party websites or resources.

Your Use of ARCQ is at your sole risk. ARCQ is provided “as is” and “as available” without warranties of any kind, either express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement. In addition, we do not represent or warrant that ARCQ is accurate, complete, reliable, current or error-free. While we attempt to make your access to and use of ARCQ safe, we cannot and do not represent or warrant that ARCQ or servers are free of viruses or other harmful components. You assume the entire risk as to the quality and performance of ARCQ.

**11. LIMITATION OF LIABILITY**

The Company and the other Company Parties will not be liable to you under any theory of liability — whether based in contract, tort, negligence, strict liability, warranty, or otherwise — for any indirect, consequential, exemplary, incidental, punitive or special damages or lost profits, even if you have been advised of the possibility of such damages.

The total liability of the Company and the other Company Parties, for any claim arising out of or relating to these Terms or ARCQ, regardless of the form of the action, is limited to the amount paid, if any, by you to Use ARCQ. In no event will the Company’s total liability arising out of or in connection with these Terms or from the Use of or inability to Use ARCQ exceed the amounts you have paid to Use ARCQ or ten ($10) U.S. dollars, if you have not had any payment obligations to the Company, as applicable. The exclusion and limitations of damages set forth above are fundamental elements of the basis of the bargain between the Company and you.

The limitations set forth in this Section will not limit or exclude liability for the gross negligence, fraud or intentional misconduct of the Company or the other Company Parties or for any other matters in which liability cannot be excluded or limited under applicable law. Additionally, some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.

**12. RELEASE**

To the fullest extent permitted by applicable law, you release the Company and the other Company Parties from responsibility, liability, claims, demands, and/or damages (actual and consequential) of every kind and nature, known and unknown (including, but not limited to, claims of negligence), arising out of or related to disputes between the Users and the acts or omissions of third parties. **You expressly waive any rights you may have under California Civil Code § 1542 as well as any other statute or common law principles that would otherwise limit the coverage of this release to include only those claims which you may know or suspect to exist in your favor at the time of agreeing to this release.**

**13. DISPUTE RESOLUTION; BINDING ARBITRATION**

**Please read the following Section carefully because it requires you to arbitrate certain disputes and claims with the Company and limits the manner in which you can seek relief from us.**

Except for small claims disputes in which you or the Company seek to bring an individual action in small claims court located in the county of your billing address or disputes in which you or the Company seeks injunctive or other equitable relief for the alleged unlawful use of intellectual property, you and the Company waive your rights to a jury trial and to have any dispute arising out of or related to these Terms or ARCQ resolved in court. Instead, all disputes arising out of or relating to these Terms or ARCQ will be resolved through confidential binding arbitration held in Santa Clara County, California in accordance with the Streamlined Arbitration Rules and Procedures (“**Rules**”) of the Judicial Arbitration and Mediation Services (“**JAMS**”), which are available on the JAMS website and hereby incorporated by reference. You either acknowledge and agree that you have read and understand the rules of JAMS or waive your opportunity to read the rules of JAMS and any claim that the rules of JAMS are unfair or should not apply for any reason.

**You and the Company agree that any dispute arising out of or related to these Terms or ARCQ is personal to you and the Company and that any dispute will be resolved solely through individual arbitration and will not be brought as a class arbitration, class action or any other type of representative proceeding.**

You and the Company agree that these Terms affect interstate commerce and that the enforceability of this Section 13 will be substantively and procedurally governed by the Federal Arbitration Act, 9 U.S.C. § 1, et seq. (“**FAA**”), to the maximum extent permitted by applicable law. As limited by the FAA, these Terms and the Rules, the arbitrator will have exclusive authority to make all procedural and substantive decisions regarding any dispute and to grant any remedy that would otherwise be available in court; provided, however, that the arbitrator does not have the authority to conduct a class arbitration or a representative action, which is prohibited by these Terms. The arbitrator may only conduct an individual arbitration and may not consolidate more than one individual’s claims, preside over any type of class or representative proceeding or preside over any proceeding involving more than one individual. You and the Company agree that for any arbitration you initiate, you will pay the filing fee and the Company will pay the remaining JAMS fees and costs. For any arbitration initiated by the Company, the Company will pay all JAMS fees and costs. You and the Company agree that the state or federal courts of the State of California and the United States sitting in Santa Clara County, California have exclusive jurisdiction over any appeals and the enforcement of an arbitration award.

**ANY CLAIM ARISING OUT OF OR RELATED TO THESE TERMS OR ARCQ MUST BE FILED WITHIN ONE YEAR AFTER SUCH CLAIM AROSE; OTHERWISE, THE CLAIM IS PERMANENTLY BARRED, WHICH MEANS THAT YOU AND THE COMPANY WILL NOT HAVE THE RIGHT TO ASSERT THE CLAIM.**

You have the right to opt out of binding arbitration within 30 days of the date you first accepted the terms of this Section 13 by notifying the Company in writing. The notification must be sent to:

**Bammerman Initiative**

Re: Arbitration Opt-out

Suite D2028

440 N Wolfe Rd

Sunnyvale, CA 94085

contact@ARCQ-ai.com

In order to be effective, the opt-out notice must include your full name and clearly indicate your intent to opt out of binding arbitration. By opting out of binding arbitration, you are agreeing to resolve Disputes in accordance with Section 14.

**14. GOVERNING LAW AND VENUE**

These Terms and your Use of ARCQ will be governed by, construed and enforced in accordance with the laws of California, without regard to conflict of law rules or principles (whether of California or any other jurisdiction) that would cause the application of the laws of any other jurisdiction. Any dispute between you and the Company that is not subject to arbitration or cannot be heard in small claims court will be resolved in the state or federal courts of California and the United States, respectively, sitting in Santa Clara County, California.

**15. CHANGES TO THESE TERMS**

We may make changes to these Terms from time to time. If we make changes, we will post the amended Terms to ARCQ and update the “Effective date” above. You are expected to check our terms regularly so you are aware of any changes, as they are binding on you. We may also attempt to notify you by providing notice through ARCQ. Unless we say otherwise in our notice, the amended terms will be effective immediately and your continued Use of ARCQ after we provide notice will confirm your acceptance of those changes. If you do not agree to the amended terms, you must stop Using ARCQ.

**16. ELECTRONIC COMMUNICATIONS**

By Using ARCQ, you also consent to receive electronic communications from us (e.g. via notices on ARCQ). These communications may include notices about ARCQ and the Purchased Content and are part of your relationship with us. You agree that any notices, agreements, disclosures or other communications that we send to you electronically will satisfy any legal communication requirements, including but not limited to that such communications shall be in writing.

**17. TERMINATION**

We reserve the right, without notice and in our sole discretion, to terminate your right to Use ARCQ. We are not responsible for any loss or harm related to your inability to Use ARCQ. Upon any termination, discontinuation or cancellation of ARCQ, all provisions of these Terms, which by their nature should survive, will survive, including without limitation, ownership provisions, warranty disclaimers, limitations of liability and dispute resolution provisions.

**18. ADDITIONAL TERMS APPLICABLE TO IOS DEVICES**

The following terms apply if you Use ARCQ on any device that contains the iOS mobile operating system (“**App**”) developed by Apple Inc. (“**Apple**”).

* **Acknowledgement**. You acknowledge that these Terms are concluded solely between you, and not with Apple, and us, not Apple. We are solely responsible for the App and the content thereof. You further acknowledge that the usage rules for the App are subject to any additional restrictions set forth in the usage rules for the Apple App Store terms of service as of the date you download the App, and in the event of any conflict, the usage rules in the Apple App Store shall govern if they are more restrictive. You acknowledge and agree that you have had the opportunity to review the Apple usage rules.
* **Scope of License**. The license granted to you is limited to a non-transferable license to use the App on any iPhone, iPod touch or iPad that you own or control as permitted by the Apple usage rules set forth in the Apple App Store terms of service.
* **Maintenance and Support**. You and us acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App.
* **Warranty**. You acknowledge that Apple is not responsible for any product warranties, whether express or implied by law, with respect to the App. In the event of any failure of the App to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price, if any, paid to Apple for the App by you; and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App. You and the Company acknowledge that to the extent that there are any applicable warranties, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any such applicable warranty would be the sole responsibility of the Company. However, you understand and agree that in accordance with these Terms, the Company has disclaimed all warranties of any kind with respect to the App, and therefore, there are no warranties applicable to the App.
* **Product Claims**. You and the Company acknowledge that as between Apple and the Company, the Company, not Apple, is responsible for addressing any claims relating to the App or your possession and/or use of the App, including, but not limited to (i) product liability claims, (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement, and (iii) claims arising under consumer protection or similar legislation.
* **Intellectual Property Rights**. You and the Company acknowledge that, in the event of any third party claim that the App or your possession and use of the App infringe third party’s intellectual property rights, the Company, and not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required under these Terms.
* **Legal Compliance**. You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country, and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.
* **Developer Name and Address**. Any questions, complaints or claims with respect to the App should be directed to:

**Bammerman Initiative**

Suite D2028

440 N Wolfe Rd

Sunnyvale, CA 94085

contact@ARCQ-ai.com

* **Third-Party Terms of Agreement**. You agree to comply with any applicable third-party terms when Using ARCQ.
* **Third-Party Beneficiary**. You and the Company acknowledge and agree that Apple, and Apple’s subsidiaries, are third-party beneficiaries of these Terms, and that, upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third-party beneficiary thereof).

**19. HOW TO CONTACT US**

If you have any questions, complaints or claims with respect to these Terms or ARCQ, please contact us via email at contact@ARCQ-ai.com or our mailing address:

**Bammerman Initiative**

Suite D2028

440 N Wolfe Rd

Sunnyvale, CA 94085

**20. MISCELLANEOUS**

These Terms constitute the entire agreement between you and us relating to ARCQ and your Use of ARCQ, and these Terms supersede and replace any and all prior oral or written understandings or agreements between the Company and you relating to ARCQ and your Use of ARCQ. The failure of us to exercise or enforce any right or provision of these Terms will not operate as a waiver of such right or provision. The waiver of such right or provision will be effective only if in writing and signed by a duly authorized representative of Company. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise. If any provision of these Terms is held invalid and unenforceable (either by an arbitrator appointed pursuant to the terms of the Dispute Resolution; Binding Arbitration Section above or by court of competent jurisdiction), that provision will be enforceable to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect. The Section titles in these Terms are for convenience only and have no legal or contractual effect. Except as otherwise provided herein, these Terms are intended solely for the benefit of you and the Company and are not intended to confer third party beneficiary rights upon any other person or entity. You may not assign or transfer your rights under these Terms, by operation of law or otherwise, without our prior written consent. Any attempt by you to assign or transfer your rights under these Terms, without such consent, will be null and of no effect. We may freely assign or transfer our rights and obligations under these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.