

# END USER LICENSE AGREEMENT

*Revised May 5, 2025*

Read our Privacy Policy at <https://ikickbutts.org/privacy-policy/>

1. **Applicable Terms.** Welcome to iKickButts! The following License Agreement and Terms of Use (“Agreement”) are a legal agreement between You and San Diego State University Research Foundation and its affiliates (“iKickButts”) that governs all use of the iKickButts website, iOS App and Android App, API, and all content, services, and products available at or through the iKickButts websites and/or the iOS and Android Apps (collectively, the “Platform”). This Agreement is between You and iKickButts and no other party (e.g., parties in control of a mobile application store or host website). However, a mobile application store may be a third-party beneficiary having the right to enforce this Agreement against You. The Platform is provided subject to Your acceptance of this Agreement without modification of any or all the terms and conditions contained herein and all other operating rules, policies (including, without limitation, the iKickButts Privacy Policy at <https://ikickbutts.org/privacy-policy/> and procedures that may be published from time to time on this Site by iKickButts).

Please read this Agreement carefully before installing, accessing, or using the Platform. By installing, configuring, accessing, or using any part of the Platform, or by clicking “I Agree,” each user (“You”, “Your” or “User”) agrees to and consents to be bound by the terms and conditions of this Agreement. If You do not agree to all the terms and conditions of this Agreement, do not access or download the Platform, or use any services made available via the Platform (the “Services”). Your acceptance of this Agreement grants to you a limited, revocable, non-transferable, non-exclusive, personal, non-sublicensable, and non-assignable license to: (i) download, install, and use the Platform on a mobile computing device or other device installed on or used in connection with your mobile computing device that you own or control; and (ii) use the Intellectual Property (as defined herein) only to the extent necessary to use the Platform for the permitted uses in this Agreement and the associated Privacy Policy.

2. **Account.** In order to gain access to the Platform, You are required to set up an “Account” with iKickButts. When You set up an Account, You are required to provide your email address and select a password (collectively, the “Account Credentials”). We reserve the right to reject your Account Credentials and deny You access to the Platform at any time, for any reason, in our sole discretion. In order to use iKickButts, you must have a valid iKickButts account (“Account”), subject to age restrictions. The Platform is available only to individuals who are at least 13 years old, unless parental permission has been obtained. Otherwise, You must obtain Your parent or guardian’s permission to use iKickButts and accept the terms of this Agreement. The Platform is available only to individuals who (i) are not located in a country that is subject to U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) are not listed on any U.S. Government list of prohibited or restricted parties. You may not transfer or share your Account Credentials with any third party.

3. **Your iKickButts Use.** You may use iKickButts to capture images and input information associated with the images (referred to as “Content”). Some Content may be shareable with other users of iKickButts and/or may be publicly accessible. iKickButts is not responsible for and does not endorse any Content made available through iKickButts that originates from a source other than iKickButts. You are responsible for maintaining the security of Your Account, and You are fully responsible for all Content provided from Your Account, for activities that occur under Your Account and any other actions taken in connection with Your Account. You must not post Content to Your Account in a misleading or unlawful manner, including in a manner intended to trade on or harm the name or reputation of others. iKickButts may, at its discretion, change or remove any Content that it considers inappropriate or unlawful. Please immediately notify iKickButts of any unauthorized uses of Your Account or any other breaches of security. iKickButts will not be liable for any acts or omissions by You, including any damages of any kind incurred as a result of such acts or omissions.
4. **Unauthorized Access to Accounts.** You must keep your Account details secure and must not share them with anyone else. You must not collect or harvest any personal data of any user of iKickButts, including Account names.
5. **Third-Party Fees.** You are responsible for any access or data fees incurred from third parties (such as your Internet provider and mobile carrier) in connection with your use and viewing of Content.
6. **Updates.** iKickButts may need updates, for example, for bug fixes, and new versions (“Updates”). Updates may be necessary to download and use iKickButts. No other party is responsible for providing any maintenance or support services. You are responsible for installing Updates to the Platform as Updates are released. iKickButts shall not be held responsible for any issues arising on the Platform due to a failure to install Updates in a timely manner.
7. **Information about You.** iKickButt’s Privacy Policy (available at <https://ikickbutts.org/privacy-policy/>) explains how we access and use your personal data and protect your privacy when using the Platform. You consent to iKickButts, its affiliates, agents, and subcontractors using and/or processing your personal data in connection with Your use of the Platform. Before providing personal data to the Platform, You agree to obtain all required consent from any third-parties, including Your contacts, partners, agents, and associates, as required by applicable data privacy and data protection n laws prior to providing Content to the Platform.
8. **Use of Data.** You agree that iKickButts may collect and use technical data and other information about Your device on which the Platform is used, including, but not limited to device specifications, software and software versions, device location, and Platform usage time.

9. **Responsibility of Contributors.** If You provide Content to the Platform, or otherwise make (or allow any third party to make) Content available by means of the Platform, You are entirely responsible for the Content of, and any harm resulting from Your use of, that Content. That is the case regardless of whether the Content in question constitutes text, graphics, an audio file, or computer software. If you own the Content prior to contributing the Content to the Platform, and that Content is subject to Intellectual Property rights, you retain ownership of those rights.

By making Content available, You represent and warrant that:

- You own and control all of the rights to the Content that You post or You otherwise have the right to post such Content to the Site;
- use and posting of the Content You supply does not violate this Agreement and will not violate any rights of or cause injury to any person or entity
- the Content does not contain or install any viruses, worms, malware, Trojan horses or other harmful or destructive content;
- the Content is not spam and does not contain unethical, intentionally misleading, or unwanted commercial content designed to drive traffic to third party sites or boost the search engine rankings of third-party sites, or to further unlawful acts (such as phishing) or mislead recipients as to the source of the material (such as spoofing);
- You will post only Content that is relevant to iKickButts and at a rate and volume that does not hinder other Users' ability to use iKickButts;
- the Content is not libelous or defamatory, does not contain threats or incite violence towards individuals or entities, and does not violate the privacy or publicity rights of any third party;
- Your Account details do not mislead others into thinking they represent another specific person or organization (unique pseudonyms are allowed). For example, Your login name cannot be the name of a person other than Yourself or company other than Your own;
- Your Content is not getting advertised via unwanted electronic messages such as spam links on newsgroups, email lists, journals and web sites, and similar unsolicited promotional methods.

Without limiting any of those representations or warranties, iKickButts has the right (though not the obligation), in iKickButts's sole discretion, to terminate or deny access to and use of the Platform to any individual or entity for any reason.

10. **License.** By submitting Content to iKickButts for inclusion on the Platform, You grant iKickButts a worldwide, royalty-free, and non-exclusive license to reproduce, modify, adapt, and publish the Content solely for the purpose of displaying, distributing, and promoting Your observations and journal via iKickButts, and for the purpose of displaying or promoting the Content or iKickButts itself in other venues, such as social media or software distribution platforms.

11. **Effect of Content Deletion.** If You delete Content, iKickButts will use reasonable efforts to remove it from the Platform, but You acknowledge that caching or references to the Content may not be made unavailable immediately. You also acknowledge that deleting Content will not remove images or Observations that other users download or save to their devices.
12. **Responsibility of Website Visitors.** iKickButts has not reviewed, and cannot review, all of the material, posted to the Platform, and cannot, therefore, be responsible for that material's content, use, or effects. By operating the Platform, iKickButts does not represent or imply that it endorses the material posted to the Platform, or that it believes such material to be accurate, useful, non-infringing, or non-harmful. The Platform may also contain, despite iKickButts policies to the contrary, content that is offensive, indecent, or otherwise objectionable, as well as content containing technical inaccuracies, typographical mistakes, and other errors, or that violates the privacy or publicity rights, or infringes the intellectual property and other proprietary rights of third parties. iKickButts disclaims any responsibility for any harm resulting from the use by visitors of the Platform, any mislabeling by Platform visitors of observations, or from any downloading by those visitors of content posted to the Platform.
13. **Inappropriate Use.** You agree not to use the Platform, the iKickButts Services, or any iKickButts Content for any illegal, unlawful, or unauthorized purpose or activity, including but not limited to threatening, abusing, soliciting, spam, harassing, stalking, impersonating, or intimidating other iKickButts Users. You agree that You must comply with applicable third-party terms of agreement when accessing iKickButts.
14. **Copyright Infringement.** iKickButts respects the intellectual property rights of others, and requests that Users of the iKickButts Platform and Service do the same. If you believe that Your work has been copied on the Platform in a way that constitutes infringement, please report the Content to iKickButts at [contact@ikickbutts.org](mailto:contact@ikickbutts.org) or [admin@ikickbutts.org](mailto:admin@ikickbutts.org). iKickButts is solely responsible for the investigation, defense, settlement, and discharge of any intellectual property claims.
15. **Intellectual Property.** "Intellectual Property" means all trademarks, service marks, domain names, graphics, logos, copyrights, derivative works, trade-secrets and confidential know-how, patents and patent applications, websites, and the goodwill connected to the foregoing, in any jurisdiction in the world, used in connection with the Platform, including iKICKBUTTS, iKICKBUTTS.ORG, and the iKICKBUTTS Logo Design. Your use of the Platform grants You no right or license to reproduce or otherwise use any iKickButts or third-party Intellectual Property for any purposes, including any derivative works made by You. This Agreement does not give or transfer to You any rights in the Intellectual Property rights, and all right, title and interest in and to such Intellectual Property will remain solely with iKickButts or such owners.
16. **Prohibited Use for Commercial AI Training.** Users may not use any iKickButts data for training artificial intelligence, machine learning models, large language models, or similar networks, algorithms, or systems for commercial purposes.

17. **Revisions.** iKickButts reserves the right, at its sole discretion, to modify, revise, or replace any part of this Agreement. It is Your responsibility to check this Agreement periodically for changes. Your continued use of or access to the Platform following the posting of any changes to this Agreement constitutes acceptance of those modifications, revisions, and/or replacements. iKickButts may also, in the future, offer new services and/or features through the Platform (including, the release of new tools and resources). Such new features and/or services shall be subject to the terms and conditions of this Agreement.
18. **Termination.** iKickButts may terminate Your access to all or any part of the Platform or Services at any time, with or without cause, with or without notice, effective immediately. If You wish to terminate this Agreement or Your iKickButts Account, You may simply discontinue using the Platform and delete your Account. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity, and limitations of liability.
19. **Disclaimer of Warranties.** The Platform is provided “as is.” iKickButts and its suppliers and Members hereby disclaim all warranties of any kind, express or implied, including, without limitation, the warranties of merchantability, fitness for a particular purpose, and non-infringement. Neither iKickButts nor its suppliers or Members makes any warranty that the Platform will be error-free, or that access thereto will be continuous or uninterrupted. You understand that You download from, or otherwise obtain content or services through, the Platform at Your own discretion and risk.
20. **Limitation of Liability.** In no event will iKickButts be liable with respect to any subject matter of this Agreement or any use of the Platform for any direct, indirect, consequential, special, unforeseeable, incidental, exemplary, or punitive damages including but not limited to lost profits, lost data, or any other commercial damages or losses arising out of or related to use of the Platform, whether or not iKickButts has been advised on the possibility of such damages, regardless of the theory of liability. iKickButts shall have no liability for any failure or delay due to matters beyond its reasonable control. The foregoing shall not apply to the extent prohibited by applicable law.
21. **General Representation and Warranty.** You represent and warrant that (i) Your use of the Platform will be in strict accordance with the iKickButts Privacy Policy located at <https://ikickbutts.org/privacy-policy/> with this Agreement and with all applicable laws and regulations (including without limitation any local laws or regulations in Your country, state, city, or other governmental area, regarding online conduct and acceptable content, and including all applicable laws regarding the transmission of technical data exported from the United States or the country in which You reside) and (ii) Your use of the Platform will not infringe or misappropriate the intellectual property rights of any third party. The Platform is provided “as-is.” We disclaim all warranties, whether express implied, or statutory, including, without limitation, any warranties of title, non-infringement of third party rights, merchantability, fitness for a particular purpose, accuracy, quiet enjoyment,

non-interference, and system integration. We do not warrant that your use of the Platform or any related service will be uninterrupted, error-free or virus free.

22. **Indemnification.** You agree to indemnify and hold harmless, and, at our option, defend, iKickButts, the Trustees of the California State University, San Diego State University, the State of California, their contractors, licensors and Members, and their respective directors, officers, employees and agents from and against any and all claims, liabilities, and expenses, including attorneys' fees, arising out of Your use of the Platform, including but not limited to Your violation this Agreement.
23. **Open Source.** You agree to indemnify and hold harmless iKickButts, its code contributors, its contractors, its licensors and Members, and their respective directors, officers, employees, and agents from and against any and all claims and expenses, including attorneys' fees, arising out of the publishing of iKickButts' source code or the acceptance of code contributions from outside parties.
24. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between iKickButts and You concerning the subject matter hereof and may be modified only by a written amendment signed by an authorized executive of iKickButts or by the posting by iKickButts of a revised version of these Terms of Use.
25. **Choice of Law.** Except to the extent applicable law, if any, provides otherwise, any access to or use of the Platform will be governed by the laws of the State of California, U.S.A., excluding its conflict of law provisions, and the proper venue for any disputes arising out of or relating to any of the same will be the state and federal courts located in San Diego County, California.
26. **Attorneys' Fees.** The prevailing party in any action or proceeding to enforce this Agreement shall be entitled to costs and attorneys' fees.
27. **Severability.** If any provision of this Agreement is held invalid or unenforceable, (a) the validity or enforceability of the remaining provisions will not be affected, unless this Agreement reasonably fails in its essential purpose; and (b) You and iKickButts will replace such provision by one or more valid and enforceable provisions approximating the original provision as closely as possible.
28. **Waiver.** A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, will not waive such term or condition or any subsequent breach thereof.
29. **Assignment.** You may not assign Your rights under this Agreement. iKickButts may assign its rights under this Agreement without condition. This Agreement will be binding upon and will inure to the benefit of the parties, their successors and permitted assigns.