



# Hedra - Terms of Use

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Last Updated Date: April 23, 2024

Welcome and thank you for your interest in Hedra, Inc. ("**Hedra**", "**we**", "**us**" or "**our**"). This Terms of Use Agreement ("**Terms of Use**", and together with any applicable Supplemental Terms defined in Section 1.3, the "**Agreement**") describes the terms and conditions that apply to your use of (i) the website located at <https://www.hedra.com/> and its subdomains and any of Hedra's other websites on which a link to these Terms of Use appears (collectively, the "**Website**"), (ii) any mobile application(s) that we offer subject to these Terms of Use (each, an "**Application**"), and (iii) the products, services, content, and other resources available on or enabled via our Website or any Application (collectively, with our Applications and Website, the "**Service**").

Please read this Agreement carefully. This Agreement governs the use of the Service and applies to all users visiting or accessing the Service. By accessing or using the Service in any way, accepting this Agreement by clicking on the "I Accept" button, completing the account registration process, browsing the Website or downloading the Application, you represent that: (1) you have read, understand, and agree to be bound by this Agreement, (2) you are of legal age to form a binding contract with Hedra, (3) you are not barred from using the Service under the laws of the United States, your place of residence of any other applicable jurisdiction, and (4) you have the authority to enter into this Agreement personally, or if you are accessing or using the Service on behalf of an entity, on behalf of the entity identified in the account registration process. If the individual entering into this Agreement is doing so on behalf of an entity, all references to "you" or "your" in this Agreement will also be deemed to refer to such entity. If you do not agree to be bound by the Terms of Use, you may not access or use the Service. The Agreement is subject to change by Hedra in its sole discretion at any time as set forth in Section 15.5 (Agreement Updates).

**If you subscribe to any feature or functionality of the Service for a term (the "Initial Term"), then your subscription will be automatically renewed for additional periods of the same duration as the Initial Term at Hedra's then-current fee for such features and functionality unless you opt out of the automatic renewal of the Service in accordance with Section 7.3(a) (Automatic Renewal) below.**

**Section 14 (Arbitration Agreement) contains provisions that govern how to resolve disputes between you and Hedra. Among other things, Section 14 (Arbitration Agreement) includes an agreement to arbitrate which requires, with limited exceptions, that all disputes between you and us shall be resolved by binding and final arbitration. Section 14 also contains a class action and jury trial waiver. Please read Section 14 (Arbitration Agreement) carefully.**

**Unless you opt out of the Arbitration Agreement (as defined in Section 14) within thirty (30) days in accordance with Section 14.10 (30-Day Right to Opt Out): (1) you will only be permitted to pursue disputes or claims and seek relief against us on an individual basis, not as a plaintiff or class member in any class or representative action or proceeding, and you waive your right to participate in a class action lawsuit or class-wide arbitration; and (2) you are waiving your right to pursue disputes or claims and seek relief in a court of law and to have a jury trial.**

## 1. SERVICE

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**1.1 Our Service.** Hedra is a social media and video content generation platform that allows individuals to create, export and share AI-generated videos and video components. The Service and the information and content available on the Service are protected by applicable intellectual property (including copyright) laws. Unless subject to a separate license agreement between you and Hedra, your right to access and use the Service, in whole or in part, is subject to this Agreement.

**1.2 Application License.** Subject to your compliance with this Agreement, Hedra grants you a limited non-exclusive, non-transferable, non-sublicensable, revocable license to download, install and use a copy of the Application on a single Device (as defined below) that you own or control and to run such copy of the Application solely for your own personal or internal business purposes.

**1.3 Supplemental Terms and Updates.** Your use of, and participation in, certain features and functionality of the Service may be subject to additional terms ("**Supplemental Terms**"). Such Supplemental Terms will either be set forth in the applicable supplemental Service or will be presented to you for your acceptance when you sign up to use the supplemental Service. If these Terms of Use are inconsistent with the Supplemental Terms, then the Supplemental Terms control with respect to such supplemental Service. You understand that the Service is evolving. As a result, Hedra may require you to install updates to the Applications that you have installed on the devices through which you access or use the Service ("**Device**"). You acknowledge and agree that Hedra may update the Service with or without notifying you. You may need to update third-party software from time to time in order to continue to use the Service. Any future release, update or other addition to the Service shall be subject to this Agreement.

**1.4 Text Message Services.** Hedra may offer one or more mobile message programs (collectively, the "Message Service") that allows users to receive SMS/MMS mobile messages by opting-in such as through online or application-based enrollment forms. Regardless of the opt-in method you use to enroll, you agree that your use of the Message Service is governed by this Agreement. We do not charge for the Message Service, but you are responsible for all charges and fees associated with mobile messaging imposed by your wireless carrier and you acknowledge that your carrier may charge you or deduct usage credit from your account when you text us or we send messages to you. Message and data rates may apply. By enrolling a telephone number in the Message Service, you authorize us to send recurring SMS and MMS mobile messages to the number you specify, and you represent that you are authorized to receive mobile messages at such number. You agree that these messages may be transmitted using an automatic telephone dialing system ("ATDS"), other automated systems for the selection or dialing of telephone numbers, or different technology. Your consent to receive mobile messages via an ATDS or other automated system for the selection or dialing of numbers is not required (directly or indirectly) as a condition of purchasing any property, goods or services. While you consent to receive messages sent using an ATDS, the foregoing shall not be interpreted to suggest or imply that any or all of our messages are sent using such a system. Message frequency varies. If you do not wish to continue participating in a Message Service program we offer, you agree to reply STOP, END, CANCEL, UNSUBSCRIBE, or QUIT to any mobile message you receive from that program to opt out. You may receive an additional mobile message confirming your decision to opt out. You understand and agree that the foregoing options are the only reasonable methods of opting out. You acknowledge that our text message platform may not recognize and respond to unsubscribe requests that alter, change, or modify the STOP, END, CANCEL, UNSUBSCRIBE or QUIT keyword commands, such as the use of different spellings or the addition of other words or phrases to the command, and agree that that we and our service providers will have no liability for failing to honor such requests. You also understand and agree that any other method of opting out, including, but not limited to, texting words other than those keyword commands set forth above or verbally requesting one of our

employees to remove you from our list, is not a reasonable means of opting out. To the extent you subscribe to more than one Message Service program that we operate, you must unsubscribe from each program separately. For Message Service support or assistance, text the HELP keyword in response to any message you receive through the Message Service or email us at [accounts@hedra.com](mailto:accounts@hedra.com). Please note that the use of this email address is not an acceptable method of opting out of Message Service. Opt outs must be submitted in accordance with the procedures set forth above. We may change any short code or telephone number we use to operate the Message Service at any time with notice to you. You acknowledge that any messages, including any STOP or HELP requests, you send to a short code or telephone number we have changed may not be received and we are not responsible for honoring requests made in such messages. The Message Service may not be available in all areas or supported by all carriers or all devices. Check with your carrier for details. Delivery of mobile messages is subject to effective transmission from your wireless carrier/network operator and is outside of our control. We and the wireless carriers supported by the Message Service are not liable for any failed, delayed or undelivered messages. If you decide to change your mobile phone number, you agree to first opt out of each Message Service program in which your number is enrolled. For clarity, you acknowledge and agree that any disputes between you and us related to the Message Service will be governed by Section 14 (Arbitration Agreement).

## 2. REGISTRATION

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**2.1 Account.** In order to access certain features of the Service, you may be required to register an account on the Service ( "**Account**" ), have a valid account on a social networking service ( "**SNS**" ) through which you can connect to the Service, as permitted by the Service (each such account, a{ ' } "**Third-Party Account**" ), or have an account with the app store from which you downloaded the Application. The Service may allow you to link your Account with a Third-Party Account by allowing Hedra to access your Third-Party Account, as is permitted under the applicable terms and conditions that govern your use of each Third-Party Account. You represent that you are entitled to disclose your Third-Party Account login information to Hedra and/or grant Hedra access to your Third-Party Account (including, but not limited to, for use for the purposes described herein) without breach by you of any of the terms and conditions that govern your use of the applicable Third-Party Account and without obligating Hedra to pay any fees or making Hedra subject to any usage limitations imposed by such third-party service providers. By granting Hedra access to any Third-Party Account, you understand that Hedra may access, make available and store (if applicable) any information, data, text, software, music, sound, photographs, graphics, video, messages, tags and/or other materials that you have provided to and stored in your Third-Party Account ( "**SNS Content**" ) so that it is available on and through the Service via your Account. Unless otherwise specified in this Agreement, all SNS Content is considered to be Your Content (as defined in Section 3.1 (Types of Content)) for all purposes of this Agreement. Depending on the Third-Party Accounts you choose and subject to any privacy settings that you have set in such Third-Party Accounts, personally identifiable information that you post to your Third-Party Accounts may be available on and through your Account on the Service. If a Third-Party Account or associated service becomes unavailable, or Hedra's access to such Third-Party Account is terminated by the third-party service provider, then SNS Content will no longer be available on and through the Service. You have the ability to disable the connection between your Account and your Third-Party Accounts at any time by accessing the "Settings" section of the Service. YOUR RELATIONSHIP WITH THE THIRD-PARTY SERVICE PROVIDERS ASSOCIATED WITH YOUR THIRD-PARTY ACCOUNTS IS GOVERNED SOLELY BY YOUR AGREEMENT(S) WITH SUCH THIRD-PARTY SERVICE PROVIDERS, AND Hedra DISCLAIMS ANY LIABILITY FOR PERSONALLY IDENTIFIABLE INFORMATION THAT MAY BE PROVIDED TO IT BY SUCH THIRD-PARTY SERVICE PROVIDERS IN VIOLATION OF THE PRIVACY SETTINGS THAT YOU

HAVE SET IN SUCH THIRD-PARTY ACCOUNTS. Hedra makes no effort to review any SNS Content for any purpose, including but not limited to, for accuracy, legality or noninfringement, and Hedra is not responsible for any SNS Content.

**2.2 Account Use.** When registering an account on the Service, you shall (i) provide true, accurate, current, and complete information about yourself as prompted by the registration form (the{' '} "**Registration Data**"), and (ii) maintain and promptly update the Registration Data to keep it true, accurate, current, and complete. Notwithstanding anything to the contrary herein, you acknowledge and agree that you have no ownership or other property interest in your Account, and you further acknowledge and agree that all rights in and to your Account are and will forever be owned by and inure to the benefit of Hedra. Furthermore, you are responsible for all activities that occur under your Account. You shall monitor your Account to restrict use by minors, and you will accept full responsibility for any unauthorized use of the Service by minors. You may not share your Account or password with anyone, and you agree to notify Hedra immediately of any unauthorized use of your password or any other breach of security. If you provide any information that is untrue, inaccurate, incomplete or not current, or Hedra has reasonable grounds to suspect that any information you provide is untrue, inaccurate, incomplete or not current, Hedra has the right to suspend or terminate your Account and refuse any and all current or future use of the Service (or any portion thereof). You agree not to create an Account using a false identity or information, or on behalf of someone other than yourself. You shall not have more than one Account at any given time. Hedra reserves the right to remove or reclaim any usernames at any time and for any reason, including but not limited to, claims by a third party that a username violates the third party's rights. You agree not to create an Account or use the Service if you have been previously removed by Hedra, or if you have been previously banned from any of the Service.

## 3. CONTENT

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**3.1 Types of Content.** Subject to your compliance with this Agreement, you may share or upload any information, data, text, graphics, video and/or other materials ("**Content**") through the Service, including by way of your prompts, comments, questions, and other input to the Service (collectively, "**Input**"). You, and not Hedra, are entirely responsible for all Input that you upload, share, post, email, transmit, query or otherwise make available through or to the Service, including the SNS Content. When you make available any Input on or to the Service, you represent that you own and/or have sufficient rights to use such Input in connection with the Service, including to grant the license set forth in Section 3.3 (License to Your Content). In response to any prompts, comments, questions, and other Input that you provide to the Service, the Service, together with any AI Services (as defined below), may generate new videos and video components ( "**Output**"). You acknowledge that the Outputs are based on your Inputs, and that Hedra has no control over any such Inputs. Accordingly,{' '} **all Outputs are provided "as is" and with "all faults"**, and Hedra makes no representations or warranties of any kind or nature with respect to any Inputs or Outputs, including any warranties of non-infringement, accuracy, completeness, truthfulness, timeliness or suitability. You are solely responsible for your use of your Outputs created through the Service, and for determining whether the Output is appropriate for your intended use, and you assume all risks associated with your use of any Outputs, including any potential copyright infringement claims from third parties or any disclosure of your Outputs that personally identifies you or any third party.

**3.2 Ownership of Content.** Hedra does not claim ownership of any Inputs or Outputs (collectively, "**Your Content**"). Subject to Section 3.3 (License to Your Content), as between the Hedra and you, you are the owner of all right, title and interest in Your Content. Notwithstanding the foregoing, given the nature of the

Service, you acknowledge that: (a) Output may not be unique across users and the Service may generate the same or similar output for another user under similar terms; and (b) the Hedra does not represent or warrant that the Outputs are protectible by any intellectual property rights under applicable law.

**3.3 License to Your Content.** Subject to any applicable Account settings that may be made available to you, you grant Hedra a non-exclusive, transferable, perpetual, irrevocable, worldwide, fully-paid, royalty-free, sublicensable (through multiple tiers of sublicensees) right (including any moral rights) and license to use, copy, reproduce, modify, adapt, prepare derivative works from, translate, distribute, publicly perform, publicly display and derive revenue or other remuneration from Your Content (in whole or in part) for the purposes of operating and providing the Service to you and to our other users. Without limiting the foregoing, you acknowledge that Your Content may be used by the Hedra, or third-party providers of the AI Services, to train, develop, enhance, evolve and improve the Service and the underlying artificial intelligence models, algorithms and related technology, products and services (including for labeling, classification, content moderation and model training purposes), as well as for marketing and promotional purposes. If you elect to share your Output with other users of the Service, you also license such third party users a non-exclusive, transferable, perpetual, irrevocable, worldwide, fully-paid, royalty-free, sublicensable (through multiple tiers of sublicensees) right (including any moral rights) and license to use, copy, reproduce, modify, adapt, prepare derivative works from, translate, distribute, publicly perform, publicly display and derive revenue or other remuneration from your Output.

**3.4 Content Provided by Other Users.** The Service may contain User Content provided by other users ("**User Content**"). Hedra is not responsible for and does not control User Content. Hedra does not approve or endorse, or make any representations or warranties with respect to, User Content. You use all User Content and interact with other users at your own risk. If you elect to share Your Content to any area of the Service that is accessible by other users, other users may be able to search for, see, use, modify and/or reproduce any of Your Content on or off the Service in accordance with Section 3.3 (License to Your Content). You are solely responsible for your interactions with other users of the Service and any other parties with whom you interact through the Service; provided, however, that Hedra reserves the right, but has no obligation, to intercede in any disputes between you and any other users. You agree that Hedra will not be responsible for any liability incurred as the result of your interactions with other users.

**3.5 AI Services.** Our Service may utilize certain artificial intelligence and deep learning platforms, algorithms, tools and models ("**AI Services**") to generate Output. You acknowledge and agree that Hedra may share your Inputs with the AI Services for this purpose and such AI Services may not be required to maintain the confidentiality of any of Your Content. Further, you understand that additional license requirements may apply to certain AI Services, including that such AI Services may retain certain rights to use or disclose Your Content, including to further train their algorithmic models. You must review and comply with such requirements for the AI Services used. You assume all risks associated with your use of such AI Services. Hedra will have no liability for the unavailability of any AI Services, or any third party's decision to discontinue, suspend or terminate any AI Services.

**3.6 Content Restrictions.** Your use of the Service must comply at all times with Hedra's [Acceptable Use Policy](#) and any applicable AI Services terms. Without limiting the foregoing, you must not share Content on or through the Service, or attempt to create or use Output through the Service, that: (A) is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, pornographic, offensive, or profane; (B) infringes or misappropriates any third party's intellectual property rights or other proprietary rights; (C) contains any viruses, worms or other malicious computer programming codes that may damage the Service; (D) contains any personal information, such as

financial, medical or other sensitive personal information such as government IDs, passport numbers or social security numbers; or (E) involves commercial activities and/or sales, such as contests, sweepstakes, barter, advertising, or pyramid schemes without Hedra's prior written consent. Furthermore, Your Content may not contain nudity, violence, sexually explicit, obscene, or offensive subject matter as determined by Hedra in its sole discretion. You may not post or make available any Content that includes any identifiable person or any

**3.7 Storage.** Unless expressly agreed to by Hedra in writing elsewhere, Hedra has no obligation to store any of Your Content. Certain features and functionality of the Service may enable you to specify the level at which the Service restricts access to Your Content, and Hedra may provide tools through the Service that enable you to make Your Content available to other users of the Service. In such cases, you are solely responsible for applying the appropriate level of access to Your Content. You agree that Hedra retains the right to create reasonable limits on Hedra's use, processing and/or storage of Content, including Your Content, such as limits on file size, storage space, processing capacity, and similar limits described on the Service and as otherwise determined by Hedra in its sole discretion.

**3.8 Privacy.** By entering or agreeing to these Terms of Use, you acknowledge that you have read and understand our [Privacy Policy](#), which may be updated or modified from time to time.

## 4. OWNERSHIP

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**4.1 The Service.** Except with respect to Your Content, you agree that Hedra and its suppliers or licensors own all rights, title and interest in the Service (including but not limited to, any computer code, themes, objects, characters, character names, stories, dialogue, concepts, artwork, animations, sounds, musical compositions, audiovisual effects, methods of operation, moral rights, documentation, and Hedra software) and all improvements, enhancements and updates made thereto. You shall not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying any the Service.

**4.2 Trademarks.** Hedra's name and all related stylizations, graphics, logos, service marks and trade names used on or with the Service are the trademarks of Hedra and may not be used without permission in connection with your, or any third-party's, products or services. Other trademarks, service marks and trade names that may appear on or in the Service are the property of their respective owners.

**4.3 Username.** Notwithstanding anything contained herein to the contrary, by submitting Your Content to any forums, comments, or any other area on the Service, you hereby expressly permit Hedra to identify you by your username (which may be a pseudonym) as the contributor of Your Content in any publication in any form, media or technology now known or later developed in connection with Your Content.

**4.4 Feedback.** You agree that submission of any ideas, suggestions, documents, and/or proposals to Hedra through its suggestion, feedback, forum, or similar pages ("**Feedback**") is at your own risk and that Hedra has no obligations (including without limitation obligations of confidentiality) with respect to such Feedback. You represent and warrant that you have all rights necessary to submit the Feedback. You hereby grant to Hedra a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and

all Feedback, and to sublicense the foregoing rights, in connection with the operation and maintenance of the Service and/or Hedra's business.

## 5. USER CONDUCT AND RESTRICTIONS; MONITORING

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**5.1 User Conduct and Restrictions.** As a condition of use, you agree not to use the Service for any purpose that is prohibited by this Agreement or by applicable law. You shall not (and shall not permit any third party) to: (i) license, sell, rent, lease, transfer, assign, reproduce, distribute, host or otherwise commercially exploit the Service or any portion of the Service; (ii) frame or utilize framing techniques to enclose any trademark or logo located on the Service or any other portion of the Service (including images, text, page layout or form); (iii) use any metatags or other "hidden text" using Hedra's name or trademarks; (iv) modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of the Service except to the extent the foregoing restrictions are expressly prohibited by applicable law; (v) use any manual or automated software, devices or other processes (including but not limited to spiders, robots, scrapers, crawlers, avatars, data mining tools, or the like) to "scrape" or download data from any web pages contained in the Service (except that we grant the operators of public search engines revocable permission to use spiders to copy materials from the Service for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials); (vi) remove or destroy any copyright notices or other proprietary markings contained on or in the Service; (vii) impersonate any person or entity, including any employee or representative of Hedra; (viii) interfere with or attempts to interfere with the proper functioning of the Service or use the Service in any way not expressly permitted by this Agreement, including but not limited to violating or attempting to violate any security features of the Service, introducing viruses, worms, or similar harmful code into the Service, or interfering or attempting to interfere with use of the Services by any other user, host, or network, including by means of overloading, "flooding," "spamming," "mail bombing," or "crashing" the Service. The rights granted to you in this Agreement are subject to your compliance with the restrictions set forth in this section. Any unauthorized use of the Service terminates the licenses granted by Hedra pursuant to this Agreement.

**5.2 Investigations, Monitoring & No Obligation to Pre-Screen.**{' '} Hedra may, but is not obligated to, investigate, monitor, pre-screen, remove, refuse, or review the Service and/or Content, including Your Content and User Content, at any time. You hereby provide your irrevocable consent to such monitoring. You acknowledge and agree that you have no expectation of privacy concerning the transmission of Your Content, including without limitation chat, text, or voice communications. Without limiting the foregoing, Hedra reserves the right to: (a) remove or refuse to post any of Your Content for any or no reason in our sole discretion; (b) take any action with respect to any of Your Content that we deem necessary or appropriate in our sole discretion, including if we believe that such Content violates this Agreement, infringes any intellectual property right or other right of any person or entity, threatens the personal safety of users of the Service or the public, or could create liability for Hedra; (c) disclose your identity or other information about you to any third party who claims that material posted by you violates their rights, including their intellectual property rights or their right to privacy; (d) take appropriate legal action, including without limitation, referral to and cooperation with law enforcement and/or other applicable legal authorities, for any illegal or unauthorized use of the Service or if Hedra otherwise believes that criminal activity has occurred; and/or (e) terminate or suspend your access to all or part of the Service for any or no reason, including without limitation, any violation of this Agreement. Upon determination of any possible violations by you of any

provision of this Agreement, Hedra, may, at its sole discretion immediately terminate your license to use the Service, or change, alter or remove Your Content, in whole or in part, without prior notice to you.

## 6. THIRD-PARTY SERVICE

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**6.1 Third-Party Websites, Applications and Ads.** The Service may use AI Services, and/or contain links to third-party websites ( "**Third-Party Websites**" ), applications ( "**Third-Party Applications**" ) and advertisements for third parties ( "**Third-Party Ads**" ) (collectively, the{ ' } "**Third-Party Services**" ). Such Third-Party Services are not under the control of Hedra. Hedra is not responsible for any Third-Party Services. When you use a Third-Party Service, you become subject to the terms and conditions (including privacy policies) of another website or destination. Hedra does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third-Party Services, or any product or service provided in connection therewith. You use all links in Third-Party Services at your own risk. When you leave our Service, this Agreement and our policies no longer govern. You should review applicable terms and policies, including privacy and data gathering practices, of any Third-Party Services, and make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any third party. Hedra may provide tools through the Service that enable you to export information, including Your Content, to Third-Party Services, including through features that allow you to link your Account with an SNS account, or through our implementation of third-party buttons (such as "like" or "share" buttons). By using one of these tools, you agree that Hedra may transfer that information to the applicable Third-Party Service. Hedra is not responsible for any Third-Party Service's use of your exported information.

**6.2 Third-Party Application Access.** With respect to any Application accessed through or downloaded from the Apple App Store (an "**App Store Sourced Application**" ), you shall only use the App Store Sourced Application (i) on an Apple-branded product that runs the iOS (Apple's proprietary operating system) and (ii) as permitted by the "Usage Rules" set forth in the Apple Media Terms of Service, except that such App Store Sourced Application may be accessed, acquired, and used by other accounts associated with the purchaser via Apple's Family Sharing function, volume purchasing, or Legacy Contacts function. Notwithstanding the first sentence in this section, with respect to any Application accessed through or downloaded from the Google Play store (a "**Google Play Sourced Application**" ), you may have additional license rights with respect to use of the Application on a shared basis within your designated family group.

**6.3 Accessing and Downloading the Application from the Apple App Store.** The following applies to any App Store Sourced Application accessed through or downloaded from the Apple App Store:

- **(a)** You acknowledge and agree that (i) this Agreement is concluded between you and Hedra only, and not Apple, and (ii) Hedra, not Apple, is solely responsible for the App Store Sourced Application and content thereof. Your use of the App Store Sourced Application must comply with the App Store Terms of Service.
- **(b)** You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Sourced Application.
- **(c)** In the event of any failure of the App Store Sourced Application to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the App Store Sourced Application to you and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App Store Sourced Application. As between



Hedra and Apple, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Hedra.

- **(d)** You and Hedra acknowledge that, as between Hedra and Apple, Apple is not responsible for addressing any claims you have or of any third party relating to the App Store Sourced Application or your possession and use of the App Store Sourced Application, including, but not limited to: (i) product liability claims; (ii) any claim that the App Store Sourced Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
- **(e)** You and Hedra acknowledge that, in the event of any third-party claim that the App Store Sourced Application or your possession and use of that App Store Sourced Application infringes that third party's intellectual property rights, as between Hedra and Apple, Hedra, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by this Agreement.
- **(f)** You and Hedra acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of this Agreement as related to your license of the App Store Sourced Application, and that, upon your acceptance of the terms and conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement as related to your license of the App Store Sourced Application against you as a third-party beneficiary thereof.
- **(g)** Without limiting any other terms of this Agreement, you must comply with all applicable third-party terms of agreement when using the App Store Sourced Application.

## 7. FEES AND PURCHASE TERMS

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**7.1 Third-Party Service Provider.** The Hedra uses Stripe, Inc. and its affiliates as its third-party service provider for payment services (e.g., card acceptance, merchant settlement, and related services) ("**Third-Party Service Provider**"). If you make a purchase on the Service, you will be required to provide your payment details and any additional information required to complete your order directly to our Third-Party Service Provider. You agree to be bound by Stripe's Privacy Policy (currently accessible at <https://stripe.com/us/privacy>) and its Terms of Service (currently accessible at <https://stripe.com/ssa>) and hereby consent and authorize the Hedra and Stripe to share any information and payment instructions you provide with one or more Third-Party Service Provider(s) to the minimum extent required to complete your transactions. Please note that online payment transactions may be subject to validation checks by our Third-Party Service Provider and your card issuer, and we are not responsible if your card issuer declines to authorize payment for any reason. For your protection, our Third-Party Service Provider uses various fraud prevention protocols and industry standard verification systems to reduce fraud and you authorize it to verify and authenticate your payment information. Your card issuer may charge you an online handling fee or processing fee. We are not responsible for this. In some jurisdictions, our Third-Party Service Provider may use third parties under strict confidentiality and data protection requirements for the purposes of payment processing services.

**7.2 Payment.** You shall pay all fees or charges ("**Fees**") to your Account in accordance with the fees, charges and billing terms in effect at the time a Fee is due and payable. By providing Hedra and/or our Third-Party Service Provider with your payment information, you agree that Hedra and/or our Third-Party Service Provider is authorized to immediately invoice your Account for all Fees due and payable to Hedra hereunder and that no additional notice or consent is required. You shall immediately notify Hedra of any change in your payment information to maintain its completeness and accuracy. Hedra reserves the right at

any time to change its prices and billing methods in its sole discretion. You agree to have sufficient funds or credit available upon placement of any order to ensure that the purchase price is collectible by us. Your failure to provide accurate payment information to Hedra and/or our Third-Party Service Provider or our inability to collect payment constitutes your material breach of this Agreement. Except as set forth in this Agreement, all Fees for the Service are non-refundable.

**7.3 Subscriptions.** If you purchase access to certain features and functionality of the Services on a time-limited basis (a "**Subscription**"), the Fee for such Subscription ("**Service Subscription Fee**") will be billed at the start of the Subscription ("**Subscription Service Commencement Date**") and at regular intervals in accordance with your elections at the time of purchase. Hedra reserves the right to change the timing of our billing. Hedra reserves the right to change the Subscription pricing at any time in accordance with Section 15.5 (Agreement Updates). If changes to the Subscription price occur that impact your Subscription, Hedra will use commercially reasonable efforts to notify you, such as by sending an email to the email address associated with your Account. If you do not agree with such changes, you may cancel your Subscription as set forth in Section 7.3(a). Hedra is not obligated to provide the Service to you until Hedra accepts your order by a confirmatory email, SMS/MMS message, or other appropriate means of communication.

- **(a) Automatic Renewal and Cancelling Subscriptions. If you elect to purchase a Subscription, your Subscription will continue and automatically renew at Hedra's then-current price for such Subscription until terminated in accordance with this Agreement.** The frequency at which your Subscription renews (i.e., weekly, monthly, annually, etc.) will be designated at the time at you sign up for the Subscription and may be modified by you via your Account settings. By subscribing, you authorize Hedra to charge the payment method designated in your Account now, and again at the beginning of any subsequent Subscription period. Upon renewal of your Subscription, if Hedra does not receive payment, (i) you shall pay all amounts due on your Account upon demand and/or (ii) you agree that Hedra may either terminate or suspend your Subscription and continue to attempt to charge your designated payment method until payment is received (upon receipt of payment, your Account will be activated and for purposes of automatic renewal, your new Subscription commitment period will begin as of the day payment was received). If you purchased your Subscription directly from Hedra, you may cancel your Subscription by logging into and going to the "Change/Cancel Membership" page of your "Account Settings" page. If you do not wish your Account to renew automatically, or if you want to change or terminate your Subscription, you must contact Hedra at support@hedra.com, or log in and go to the "Change/Cancel Membership" page on your "Account Settings" page. If you cancel your Subscription, you may use your Subscription until the end of your then-current Subscription term; your Subscription will not be renewed after your then-current term expires. However, you will not be eligible for a prorated refund of any portion of the Service Subscription Fee paid for the then-current Subscription period.
- **(b) Cancelling Subscriptions Purchased via a Third-Party Application Store.** If you wish to cancel, change, or terminate a Subscription that you purchased from a third-party application store, you must do so prior to the Renewal Commencement Date via such third-party application store.
- **(c) Upgrades and Downgrades.** If you choose to upgrade your Subscription in the middle of a Subscription period, such upgrade will take effect immediately and any incremental fees associated with such upgrade will be charged in accordance with this Agreement. In any future Renewal Term, the fees will reflect any such upgrades. If you choose to downgrade a Subscription, the downgrade will take effect as of the first day of the next Renewal Term. Downgrading a Subscription may cause

loss of content, features, or capacity of the Services as available, and Hedra does not accept any liability for such loss.

**7.4 Taxes.** The Fees do not include any Sales Tax (defined below) that may be due in connection with the Service provided under this Agreement. If Hedra determines it has a legal obligation to collect Sales Tax from you in connection with this Agreement, Hedra shall collect such Sales Tax in addition to the Fees. If any services, or payments for any services, under this Agreement are subject to any Sales Tax in any jurisdiction and you have not remitted the applicable Sales Tax to Hedra, you shall be responsible for the payment of such Sales Tax and any related penalties or interest to the relevant tax authority, and you shall indemnify Hedra for any liability or expense Hedra may incur in connection with such Sales Taxes. Upon Hedra's request, you will provide it with official receipts issued by the appropriate taxing authority, or other such evidence that you have paid all applicable taxes. For purposes of this section, "**Sales Tax**" means any sales or use tax and any other tax measured by sales proceeds that is the functional equivalent of a sales tax where the applicable taxing jurisdiction does not otherwise impose a sales or use tax. You shall make all payments of Fees to Hedra free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments of Fees to Hedra shall be your sole responsibility, and you shall provide Hedra with official receipts issued by the appropriate taxing authority, or such other evidence as we may reasonably request, to establish that such taxes have been paid.

**7.5 Free Trials and Promotional Access.** Any free trial or other promotion that provides users access to the Service must be used within the specified time of the trial. At the end of the trial or promotional period, your use of that Service will automatically roll into a paid Subscription at our then-current Service Subscription Fees and you will be charged for such Subscription as set forth in Section 7.3 (Subscriptions) if you do not cancel prior to Subscription Service Commencement Date. If you are inadvertently charged for a Subscription and provide us with written notice of the error, Hedra will have the charges reversed.

**7.6 Advertising Revenue.** Hedra reserves the right to display Third-Party Ads before, after, or in conjunction with Content posted on the Service (including Your Content), and you acknowledge and agree that Hedra has no obligation to you in connection therewith (including, without limitation, any obligation to share revenue received by Hedra as a result of such advertising).

## 8. INDEMNIFICATION

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You shall indemnify and hold Hedra, its parents, subsidiaries, affiliates, officers, employees, agents, partners, suppliers, and licensors (each, a "Hedra Party" and collectively, the "Hedra Parties") harmless from any losses, costs, liabilities and expenses (including reasonable attorneys' fees) relating to or arising out of any and all of the following: (i) Your Content, including any use of the Output by you; (ii) your use of, or inability to use, the Service; (iii) your violation of this Agreement; (iv) your violation of any rights of another party, including any user; or (v) your violation of any applicable laws, rules or regulations. Hedra reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with Hedra in asserting any available defenses. This provision does not require you to indemnify any of the Hedra Parties for any unconscionable commercial practice by such party or for such party's fraud, deception, false promise, misrepresentation or concealment, or suppression or omission of any material fact in connection with the Service provided hereunder. You agree that the provisions in this section will survive any termination of your Account, this Agreement and/or your access to the Service.

## 9. DISCLAIMER OF WARRANTIES

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9.1 **As Is.** YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK, AND THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. THE Hedra PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARISING FROM USE OF THE SERVICE OR YOUR CONTENT. THE Hedra PARTIES MAKE NO WARRANTY, REPRESENTATION OR CONDITION THAT: (1) THE SERVICE OR ANY OUTPUT WILL MEET YOUR REQUIREMENTS (SUCH AS THE QUALITY, EFFECTIVENESS, REPUTATION AND OTHER CHARACTERISTICS OF SERVICE); (2) YOUR USE OF THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; OR (3) THE OUTPUT, ADVICE, RESULTS, OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE. ANY CONTENT DOWNLOADED FROM OR OTHERWISE ACCESSED THROUGH THE SERVICE IS ACCESSED AT YOUR OWN RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY, INCLUDING, BUT NOT LIMITED TO, YOUR COMPUTER SYSTEM AND/OR ANY DEVICE YOU USE TO ACCESS THE SERVICE, OR ANY OTHER LOSS THAT RESULTS FROM ACCESSING SUCH CONTENT.

9.2 **No Liability for Conduct of Third Parties.** YOU ARE SOLELY RESPONSIBLE FOR ALL OF YOUR COMMUNICATIONS AND INTERACTIONS WITH THIRD PARTIES ON THE SERVICE. YOU ACKNOWLEDGE AND AGREE THAT THE Hedra PARTIES ARE NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD THE Hedra PARTIES LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OPERATORS OF EXTERNAL SITES, INCLUDING ANY THIRD-PARTY PROVIDERS OF AI SERVICES, AND THAT THE RISK OF INJURY FROM SUCH THIRD PARTIES RESTS ENTIRELY WITH YOU. YOU UNDERSTAND THAT Hedra DOES NOT MAKE ANY ATTEMPT TO VERIFY THE STATEMENTS OF USERS. HEDRA MAKES NO WARRANTY THAT THE GOODS OR SERVICE PROVIDED BY THIRD PARTIES WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE, OR ERROR-FREE BASIS. Hedra MAKES NO WARRANTY REGARDING THE ACCURACY, TIMELINESS, TRUTHFULNESS, COMPLETENESS OR RELIABILITY OF ANY USER CONTENT OBTAINED THROUGH THE SERVICE.

## 10. LIMITATION OF LIABILITY

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10.1 **Disclaimer of Certain Damages.** YOU UNDERSTAND AND AGREE THAT, TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT SHALL THE Hedra PARTIES BE LIABLE FOR ANY LOSS OF PROFITS, REVENUE OR DATA, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR DAMAGES OR COSTS DUE TO LOSS OF PRODUCTION OR USE, BUSINESS INTERRUPTION, OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, IN EACH CASE WHETHER OR NOT ANY Hedra PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SERVICE, OR ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER USERS OF THE SERVICE OR THIRD PARTIES, ON ANY THEORY OF LIABILITY, INCLUDING TO THE EXTENT RESULTING FROM: (i) THE USE OR INABILITY TO USE THE SERVICE; (ii) ANY GOODS, DATA, INFORMATION OR SERVICE PURCHASED OR OBTAINED; OR MESSAGES RECEIVED FOR TRANSACTIONS ENTERED INTO THROUGH THE SERVICE; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR

(v) ANY OTHER MATTER RELATED TO THE SERVICE, WHETHER BASED ON WARRANTY, COPYRIGHT, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE FOREGOING LIMITATION OF LIABILITY DOES NOT APPLY TO LIABILITY OF A Hedra PARTY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY A HEDRA PARTY'S NEGLIGENCE; OR FOR (A) ANY INJURY CAUSED BY A Hedra PARTY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

**10.2 Cap on Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, THE Hedra PARTIES SHALL NOT BE LIABLE TO YOU FOR MORE THAN THE GREATER OF (i) THE TOTAL AMOUNT PAID TO Hedra by you during the THREE-month period prior to the act, omission or occurrence giving rise to such liability; (ii) \$100; or (iii) IF APPLICABLE, THE STATUTORY REMEDY OR PENALTY IMPOSED BY THE STATUTE UNDER WHICH SUCH CLAIM ARISES. THE FOREGOING CAP ON LIABILITY DOES NOT APPLY TO LIABILITY OF A Hedra PARTY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY A Hedra PARTY'S NEGLIGENCE; OR (B) ANY INJURY CAUSED BY A Hedra PARTY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

**10.3 Content.** Hedra ASSUMES NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MIS-DELIVERY OR FAILURE TO STORE ANY CONTENT (INCLUDING, BUT NOT LIMITED TO, YOUR CONTENT AND USER CONTENT), USER COMMUNICATIONS OR PERSONALIZATION SETTINGS.

**10.4 Exclusion of Damages.** CERTAIN JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

**10.5 Basis of the Bargain.** THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN Hedra AND YOU.

## 11. PROCEDURE FOR MAKING CLAIMS OF INTELLECTUAL PROPERTY RIGHT INFRINGEMENT

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It is Hedra's policy to terminate membership privileges of any user who repeatedly infringes copyright, trademark, or other intellectual property rights upon prompt notification to Hedra by the respective intellectual property owner or their legal agent. Without limiting the foregoing, if you believe that your work has been copied and posted on the Service in a way that constitutes intellectual property rights infringement, please provide our designated intellectual property agent with the following information: (i) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright, trademark, or other intellectual property right; (ii) a description of the copyrighted work, trademark, or other intellectual property right that you claim has been infringed; (iii) a description of the location on the Service of the material that you claim is infringing; (iv) your address, telephone number, and email address; (v) a written statement by you that you have a good faith belief that the disputed use is not authorized by the copyright, trademark, or other intellectual property right owner, its agent or the law; and (vi) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright, trademark, or other intellectual property right owner or authorized to act on the copyright, trademark, or other intellectual property right owner's behalf. Contact information for Hedra's designated agent for notice of claims of infringement is as follows:

Michael Lingelbach

- Address:

Hedra Inc.  
188 King St. PH  
San Francisco, CA 94107

- Phone: 415-267-9846
- Email: copyright@hedra.com

## 12. TERM AND TERMINATION

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The term of this Agreement commences on the date when you accept this Agreement (as described in the preamble above), and continues in full force and effect while you use the Service, unless terminated earlier in accordance with this Agreement. [You have thirty (30) days from the Subscription Service Commencement Date, or any Renewal Commencement Date, for any Service hereunder, to cancel such Service, in which case, Hedra will refund your Service Subscription Fee if already paid pursuant to Section 7.2 (Payment) or 7.3 (Subscriptions), for the applicable Service.] Except as set forth above, the Service Subscription Fee for any Service is non-refundable. If you have materially breached any provision of this Agreement, or if Hedra is required to do so by law (e.g., where the provision of the Service is, or becomes, unlawful), Hedra has the right to, immediately and without notice, suspend or terminate any Service provided to you. Hedra reserves the right to terminate this Agreement or your access to the Service at any time without cause upon notice to you. [In the event we exercise this termination right, we will refund you for any pre-paid portion of your unused Subscription.] You agree that all terminations for cause are made in Hedra's sole discretion and that Hedra shall not be liable to you or any third party for any termination of your Account. If you want to terminate this Agreement, you may do so by (i) notifying Hedra at any time and (ii) closing your Account for the Service. Your notice should be sent, in writing, to Hedra's address set forth below. ANY SUCH TERMINATION WILL BE EFFECTIVE AT THE END OF THE THEN-CURRENT TERM OF ANY AND ALL OF THE SUBSCRIPTIONS AS SET FORTH IN SECTION 7.3(a) (AUTOMATIC RENEWAL), WHICH WILL CONTINUE AT THE END OF EACH SUBSCRIPTION PERIOD UNLESS YOU CANCEL YOUR SUBSCRIPTION IN ACCORDANCE WITH THE PROCEDURE SET FORTH IN SECTION 7.3(a) (AUTOMATIC RENEWAL). Upon termination of the Service or the applicable feature or functionality thereof, your right to use the Service or the applicable feature or functionality thereof will automatically terminate, and we may delete Your Content associated therewith from our live databases. If we terminate your Account for cause, we may also bar your further use or access to the Service. Hedra will not have any liability whatsoever to you for any suspension or termination, including for deletion of Your Content. All provisions of this Agreement which by their nature should survive, will survive termination of Service, including without limitation, ownership provisions, warranty disclaimers, and limitations of liability. If this Agreement is terminated for cause by Hedra or if your Account or ability to access the Service is discontinued by Hedra due to your violation of any portion of this Agreement or for conduct otherwise deemed inappropriate, then you agree that you shall not attempt to re-register with or access the Service through use of a different member name or otherwise.

## 13. INTERNATIONAL USERS

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The Service may be accessed from countries around the world and may contain references to services and Content that are not available in your country. These references do not imply that Hedra intends to announce such service or Content in your country. The Service is controlled and offered by Hedra from its facilities in the United States of America. Hedra makes no representations that the Service is appropriate or

available for use in other locations. Those who access or use the Service from other countries do so at their own volition and are responsible for compliance with local law.

## 14. ARBITRATION AGREEMENT

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**Please read this section (the "Arbitration Agreement") carefully. It is part of your contract with Hedra and affects your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.**

**14.1 Applicability of Arbitration Agreement.** Subject to the terms of this Arbitration Agreement, you and Hedra agree that any dispute, claim, disagreements arising out of or relating in any way to your access to or use of the Service, any communications you receive, any products sold or distributed through the Service or this Agreement and prior versions of this Agreement, including claims and disputes that arose between you and us before the effective date of this Agreement (each, a "Dispute") will be resolved by binding arbitration, rather than in court, except that: (i) you and Hedra may assert claims or seek relief in small claims court if such claims qualify and remain in small claims court; and (ii) you or Hedra may seek equitable relief in court for infringement or other misuse of intellectual property rights (such as trademarks, trade dress, domain names, trade secrets, copyrights, and patents). For purposes of this Arbitration Agreement, "**Dispute**" will also include disputes that arose or involve facts occurring before the existence of this or any prior versions of this Agreement as well as claims that may arise after the termination of this Agreement.

**14.2 Informal Dispute Resolution.** There might be instances when a Dispute arises between you and Hedra. If that occurs, Hedra is committed to working with you to reach a reasonable resolution. You and Hedra agree that good faith informal efforts to resolve Disputes can result in a prompt, low-cost and mutually beneficial outcome ("**Informal Dispute Resolution**"). You and Hedra therefore agree that before either party commences arbitration against the other (or initiates an action in small claims court if a party so elects), we will personally meet and confer telephonically or via videoconference, in a good faith effort to resolve informally any Dispute covered by this Arbitration Agreement ( "**Informal Dispute Resolution Conference**"). If you are represented by counsel, your counsel may participate in the conference, but you will also participate in the conference.

The party initiating a Dispute must give notice to the other party in writing of its intent to initiate an Informal Dispute Resolution Conference ("**Notice**"), which shall occur within forty-five (45) days after the other party receives such Notice, unless an extension is mutually agreed upon by the parties. Notice to Hedra that you intend to initiate an Informal Dispute Resolution Conference should be sent by email to support@hedra.com or regular mail to our offices located at Hedra Inc. 2261 Market Street STE 5341 San Francisco, CA, 94114 United States. The Notice must include: (1) your name, telephone number, mailing address, e-mail address associated with your Account (if you have one); (2) the name, telephone number, mailing address and e-mail address of your counsel, if any; and (3) a description of your Dispute.

The Informal Dispute Resolution Conference shall be individualized such that a separate conference must be held each time either party initiates a Dispute, even if the same law firm or group of law firms represents multiple users in similar cases, unless all parties agree; multiple individuals initiating a Dispute cannot participate in the same Informal Dispute Resolution Conference unless all parties agree. In the time between a party receiving the Notice and the Informal Dispute Resolution Conference, nothing in this Arbitration Agreement shall prohibit the parties from engaging in informal communications to resolve the initiating

party's Dispute. Engaging in the Informal Dispute Resolution Conference is a condition precedent and requirement that must be fulfilled before commencing arbitration. The statute of limitations and any filing fee deadlines shall be tolled while the parties engage in the Informal Dispute Resolution Conference process required by this section.

**14.3 Waiver of Jury Trial.** YOU AND Hedra HEREBY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY. You and Hedra are instead electing that all Disputes shall be resolved by arbitration under this Arbitration Agreement, except as specified in Section 14.1 (Applicability of Arbitration Agreement). There is no judge or jury in arbitration, and court review of an arbitration award is subject to very limited review.

**14.4 Waiver of Class and Other Non-Individualized Relief.** YOU AND Hedra AGREE THAT, EXCEPT AS SPECIFIED IN SECTION 14.9 (BATCH ARBITRATION), EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT ON A CLASS, REPRESENTATIVE, OR COLLECTIVE BASIS, AND THE PARTIES HEREBY WAIVE ALL RIGHTS TO HAVE ANY DISPUTE BE BROUGHT, HEARD, ADMINISTERED, RESOLVED, OR ARBITRATED ON A CLASS, COLLECTIVE, REPRESENTATIVE, OR MASS ACTION BASIS. ONLY INDIVIDUAL RELIEF IS AVAILABLE, AND DISPUTES OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. Subject to this Arbitration Agreement, the arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by the party's individual claim. Nothing in this paragraph is intended to, nor shall it, affect the terms and conditions under Section 14.9 (Batch Arbitration). Notwithstanding anything to the contrary in this Arbitration Agreement, if a court decides by means of a final decision, not subject to any further appeal or recourse, that the limitations of this section are invalid or unenforceable as to a particular claim or request for relief (such as a request for public injunctive relief), you and Hedra agree that that particular claim or request for relief (and only that particular claim or request for relief) shall be severed from the arbitration and may be litigated in the state or federal courts located in the State of New York. All other Disputes shall be arbitrated or litigated in small claims court. This section does not prevent you or Hedra from participating in a class-wide settlement of claims.

**14.5 Rules and Forum.** This Agreement evidences a transaction involving interstate commerce; and notwithstanding any other provision herein with respect to the applicable substantive law, the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, will govern the interpretation and enforcement of this Arbitration Agreement and any arbitration proceedings. If the Informal Dispute Resolution process described above does not resolve satisfactorily within sixty (60) days after receipt of your Notice, you and Hedra agree that either party shall have the right to finally resolve the Dispute through binding arbitration. The arbitration will be administered by the American Arbitration Association ("**AAA**"), in accordance with the Consumer Arbitration Rules (the "**AAA Rules**") then in effect, except as modified by this section of this Arbitration Agreement. The AAA Rules are currently available at <https://www.adr.org/sites/default/files/Consumer%20Rules.pdf>.

A party who wishes to initiate arbitration must provide the other party with a request for arbitration (the "**Request**"). The Request must include: (1) the name, telephone number, mailing address, e-mail address of the party seeking arbitration and the account username (if applicable) as well as the email address associated with any applicable Account; (2) a statement of the legal claims being asserted and the factual bases of those claims; (3) a description of the remedy sought and an accurate, good-faith calculation of the amount in controversy in United States dollars; (4) a statement certifying completion of the Informal Dispute



Resolution process as described above; and (5) evidence that the requesting party has paid any necessary filing fees in connection with such arbitration.

If the party requesting arbitration is represented by counsel, the Request shall also include counsel's name, telephone number, mailing address, and email address. Such counsel must also sign the Request. By signing the Request, counsel certifies to the best of counsel's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that: (1) the Request is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of dispute resolution; (2) the claims, defenses and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; and (3) the factual and damages contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

Unless you and Hedra otherwise agree, or the Batch Arbitration process discussed in Section 14.9 (Batch Arbitration) is triggered, the arbitration will be conducted in the county where you reside. Subject to the AAA Rules, the arbitrator may direct a limited and reasonable exchange of information between the parties, consistent with the expedited nature of the arbitration. If the AAA is not available to arbitrate, the parties will select an alternative arbitral forum. Your responsibility to pay any AAA fees and costs will be solely set forth in the applicable AAA Rules.

You and Hedra agree that all materials and documents exchanged during the arbitration proceedings shall be kept confidential and shall not be shared with anyone except the parties' attorneys, accountants, or business advisors, and shall be subject to the condition that they agree to keep all materials and documents exchanged during the arbitration proceedings confidential.

**14.6 Arbitrator.** The arbitrator will be either a retired judge or an attorney licensed to practice law in the state of New York and will be selected by the parties from the AAA's roster of consumer dispute arbitrators. If the parties are unable to agree upon an arbitrator within thirty-five (35) days of delivery of the Request, then the AAA will appoint the arbitrator in accordance with the AAA Rules, provided that if the Batch Arbitration process under Section 14.9 (Batch Arbitration) is triggered, the AAA will appoint the arbitrator for each batch.

**14.7 Authority of Arbitrator.** The arbitrator shall have exclusive authority to resolve any Dispute, including, without limitation, disputes arising out of or related to the interpretation or application of the Arbitration Agreement, including the enforceability, revocability, scope, or validity of the Arbitration Agreement or any portion of the Arbitration Agreement, except for the following: (1) all Disputes arising out of or relating to Section 14.4 (Waiver of Class and Other Non-Individualized Relief), including any claim that all or part of Section 14.4 (Waiver of Class and Other Non-Individualized Relief) is unenforceable, illegal, void or voidable, or that such Section 14.4 (Waiver of Class and Other Non-Individualized Relief) has been breached, shall be decided by a court of competent jurisdiction and not by an arbitrator; (2) except as expressly contemplated in Section 14.9 (Batch Arbitration), all Disputes about the payment of arbitration fees shall be decided only by a court of competent jurisdiction and not by an arbitrator; (3) all Disputes about whether either party has satisfied any condition precedent to arbitration shall be decided only by a court of competent jurisdiction and not by an arbitrator; and (4) all Disputes about which version of the Arbitration Agreement applies shall be decided only by a court of competent jurisdiction and not by an arbitrator. The arbitration proceeding will not be consolidated with any other matters or joined with any other cases or parties, except as expressly provided in Section 14.9 (Batch Arbitration). The arbitrator shall have the authority to grant motions

dispositive of all or part of any Dispute. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The award of the arbitrator is final and binding upon you and us. Judgment on the arbitration award may be entered in any court having jurisdiction.

**14.8 Attorneys' Fees and Costs.** The parties shall bear their own attorneys' fees and costs in arbitration unless the arbitrator finds that either the substance of the Dispute or the relief sought in the Request was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)). If you or Hedra need to invoke the authority of a court of competent jurisdiction to compel arbitration, then the party that obtains an order compelling arbitration in such action shall have the right to collect from the other party its reasonable costs, necessary disbursements, and reasonable attorneys' fees incurred in securing an order compelling arbitration. The prevailing party in any court action relating to whether either party has satisfied any condition precedent to arbitration, including the Informal Dispute Resolution process, is entitled to recover their reasonable costs, necessary disbursements, and reasonable attorneys' fees and costs.

**14.9 Batch Arbitration.** To increase the efficiency of administration and resolution of arbitrations, you and Hedra agree that in the event that there are one-hundred (100) or more individual Requests of a substantially similar nature filed against Hedra by or with the assistance of the same law firm, group of law firms, or organizations, within a thirty (30) day period (or as soon as possible thereafter), the AAA shall (1) administer the arbitration demands in batches of 100 Requests per batch (plus, to the extent there are less than 100 Requests left over after the batching described above, a final batch consisting of the remaining Requests); (2) appoint one arbitrator for each batch; and (3) provide for the resolution of each batch as a single consolidated arbitration with one set of filing and administrative fees due per side per batch, one procedural calendar, one hearing (if any) in a place to be determined by the arbitrator, and one final award ("**Batch Arbitration**").

All parties agree that Requests are of a "substantially similar nature" if they arise out of or relate to the same event or factual scenario and raise the same or similar legal issues and seek the same or similar relief. To the extent the parties disagree on the application of the Batch Arbitration process, the disagreeing party shall advise the AAA, and the AAA shall appoint a sole standing arbitrator to determine the applicability of the Batch Arbitration process ("**Administrative Arbitrator**"). In an effort to expedite resolution of any such dispute by the Administrative Arbitrator, the parties agree the Administrative Arbitrator may set forth such procedures as are necessary to resolve any disputes promptly. The Administrative Arbitrator's fees shall be paid by Hedra.

You and Hedra agree to cooperate in good faith with the AAA to implement the Batch Arbitration process including the payment of single filing and administrative fees for batches of Requests, as well as any steps to minimize the time and costs of arbitration, which may include: (1) the appointment of a discovery special master to assist the arbitrator in the resolution of discovery disputes; and (2) the adoption of an expedited calendar of the arbitration proceedings.

This Batch Arbitration provision shall in no way be interpreted as authorizing a class, collective and/or mass arbitration or action of any kind, or arbitration involving joint or consolidated claims under any circumstances, except as expressly set forth in this provision.

**14.10 30-Day Right to Opt Out.** You have the right to opt out of the provisions of this Arbitration Agreement by sending written notice of your decision to opt out to: Hedra Inc. 2261 Market Street STE 5341 San Francisco, CA, 94114 United States, within thirty (30) days after first becoming subject to this Arbitration Agreement. Your notice must include your name and address, the email address associated with your Account (if you have one), and an unequivocal statement that you want to opt out of this Arbitration Agreement. If you opt out of this Arbitration Agreement, all other parts of this Agreement will continue to apply to you. Opting out of this Arbitration Agreement has no effect on any other arbitration agreements that you may currently have, or may enter in the future, with us.

**14.11 Invalidity, Expiration.** Except as provided in Section 14.4 (Waiver of Class or Other Non-Individualized Relief), if any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Arbitration Agreement shall continue in full force and effect. You further agree that any Dispute that you have with Hedra as detailed in this Arbitration Agreement must be initiated via arbitration within the applicable statute of limitation for that claim or controversy, or it will be forever time barred. Likewise, you agree that all applicable statutes of limitation will apply to such arbitration in the same manner as those statutes of limitation would apply in the applicable court of competent jurisdiction.

**14.12 Modification.** Notwithstanding any provision in this Agreement to the contrary, we agree that if Hedra makes any future material change to this Arbitration Agreement, we will notify you. Unless you reject the change within thirty (30) days of such change become effective by writing to Hedra at Hedra Inc. 2261 Market Street STE 5341 San Francisco, CA, 94114 United States, your continued use of the Service, including the acceptance of products and services offered on the Service following the posting of changes to this Arbitration Agreement constitutes your acceptance of any such changes. Changes to this Arbitration Agreement do not provide you with a new opportunity to opt out of the Arbitration Agreement if you have previously agreed to a version of this Agreement and did not validly opt out of arbitration. If you reject any change or update to this Arbitration Agreement, and you were bound by an existing agreement to arbitrate Disputes arising out of or relating in any way to your access to or use of the Service, any communications you receive, any products sold or distributed through the Service or this Agreement, the provisions of this Arbitration Agreement as of the date you first accepted this Agreement (or accepted any subsequent changes to this Agreement) remain in full force and effect. Hedra will continue to honor any valid opt outs of the Arbitration Agreement that you made to a prior version of this Agreement.

## 15. GENERAL PROVISIONS

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**15.1 Electronic Communications.** The communications between you and Hedra may take place via electronic means, whether you visit the Service or send Hedra emails, or whether Hedra posts notices on the Service or communicates with you via email. For contractual purposes, you (i) consent to receive communications from Hedra in an electronic form; and (ii) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Hedra electronically provides to you satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights, including but not limited to the Electronic Signatures in Global and National Commerce Act at 15 U.S.C. §7001 et seq. ("**E-Sign**").

**15.2 Assignment.** The Agreement, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated or otherwise transferred by you without Hedra's prior written consent. Hedra may, without your consent, freely assign and transfer this Agreement, including any of its rights, obligations,

or licenses granted under this Agreement. Any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

**15.3 Force Majeure.** Hedra shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, pandemics, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

**15.4 Questions, Complaints, Claims.** If you have any questions, complaints or claims with respect to the Service, please contact us at: support@hedra.com. We will do our best to address your concerns. If you feel that your concerns have been addressed incompletely, we invite you to let us know for further investigation. In accordance with California Civil Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Service of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (800) 952-5210.

**15.5 Agreement Updates.** When changes are made, Hedra will make a new copy of this Terms of Use and/or Supplemental Terms, as applicable, available on the Service, and we will also update the "Last Updated" date at the top of this Agreement. If we make any material changes and you have registered an Account with us, we will also send an email with an updated copy of this Agreement to you at the email address associated with your Account. Unless otherwise stated in such update, any changes to this Agreement will be effective immediately for users without an Account and thirty (30) days after posting for users with an Account. Hedra may require you to provide consent to the updated Agreement in a specified manner before further use of the Service is permitted. IF YOU DO NOT AGREE TO ANY CHANGE(S) AFTER RECEIVING A NOTICE OF SUCH CHANGE(S), YOU SHALL STOP USING THE SERVICE.

**15.6 Exclusive Venue and Governing Law.** To the extent the parties are permitted under this Agreement to initiate litigation in a court, both you and Hedra agree that all claims and disputes arising out of or relating to this Agreement will be litigated exclusively in the state or federal courts located in New York, New York. THIS AGREEMENT and any action related thereto will be governed and interpreted by and under the laws of the State of NEW YORK, consistent with the Federal Arbitration Act, without giving effect to any principles that provide for the application of the law of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the AGREEMENT.

**15.7 Notice.** Where Hedra requires that you provide an email address, you are responsible for providing Hedra with a valid and current email address. In the event that the email address you provide to Hedra is not valid, or for any reason is not capable of delivering to you any notices required by this Agreement, Hedra's dispatch of the email containing such notice will nonetheless constitute effective notice. You may give notice to Hedra at the following address: Hedra Inc. 2261 Market Street STE 5341 San Francisco, CA, 94114 United States. Such notice shall be deemed given when received by Hedra by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail at the above address.

**15.8 Waiver and Severability.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. If any portion of this Agreement is held invalid or unenforceable, that portion must be construed in a manner to reflect, as nearly as possible, the original intention of the parties, and the remaining portions must remain in full force and effect.

**15.9 Export Control.** You may not use, export, import, or transfer the Service except as authorized by U.S. law, the laws of the jurisdiction in which you obtained the Service, and any other applicable laws. In particular, but without limitation, the Service may not be exported or re-exported (i) into any United States embargoed countries, or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List. By using the Service, you represent and warrant that (A) 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 (B) you are not listed on any U.S. Government list of prohibited or restricted parties. You also will not use the Service for any purpose prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. You acknowledge and agree that products, services or technology provided by Hedra are subject to the export control laws and regulations of the United States. You shall comply with these laws and regulations and shall not, without prior U.S. government authorization, export, re-export, or transfer Hedra products, services or technology, either directly or indirectly, to any country in violation of such laws and regulations.

**15.10 Entire Agreement.** The Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter.