

SUNDAYSKY TERMS OF SERVICE

Last updated: May 20, 2024

These Platform Terms of Service (the “**Terms**”) govern the use of the Platform and Professional Services purchased by the entity executing an Order (“**Customer**”) with SundaySky, Inc. (“**SundaySky**”). **Customer** and SundaySky are referred to the “**Parties**” and each, a “**Party**”. The Terms (including exhibits and terms referenced therein) together with the Orders, is referred to collectively as the “**Agreement**”.

Article 1. Platform

1.1 **Platform.** During the Term, SundaySky agrees to provide Customer with access and use of those elements of SundaySky’s Platform purchased by Customer as described in the applicable SundaySky order form signed by both Parties (an “**Order**”). SundaySky’s video experience platform, together with any changes, enhancements, extensions, adaptations, components, additions, improvements and applications to the foregoing that SundaySky makes generally available to its customers at no additional charge, is referred to as the “**Platform**”. Customer will have access and use of the Platform by a specified number of Customer authorized users (“**Users**”) in the configuration and up to the level of capacity Customer has purchased in the relevant Order. If Customer has not purchased rights to Videos (as identified in the Order), then references to Videos in this Agreement and the associated rights will not apply to such Customer. Customer may permit Customer’s affiliates to access and use the Platform for the benefit of Customer and such Customer affiliates, and all obligations of Customer will apply equally to such Customer affiliates. Customer will be responsible for all acts or omissions of its affiliates and Users under the Agreement. Customer affiliates may directly purchase and use the Platform and Professional Services under this Agreement by executing Orders that incorporate by reference the terms of this Agreement. Such affiliate Orders together with the Terms will form a separate contract between the Customer affiliate and SundaySky, and in each such case, all references in the Terms to Customer will be deemed to refer to such Customer affiliate for purposes of such Order. “**Video**” means dynamic set of video scenes created through the Platform.

1.2 **Video Distribution.** During the Term, Customer can distribute Videos over Owned Media and Paid Media. “**Owned Media**” means Customer’s owned video delivery channels, including but not limited to email, portal, SMS, mobile app, and websites. “**Paid Media**” means third-party advertising channels, including but not limited to social media, connected TV, programmatic exchange, or publisher direct. Customer will be responsible for the creation, operation, and management of its Owned Media and can embed the Video Player into its Owned Media. “**Video Player**” means the SundaySky video player that enables dynamic Video and reporting. Customer may download Video(s) during the Term which will be in a static non-dynamic form that cannot be modified or personalized (a “**Static Video**”) and may distribute the Static Video(s) via electronic means during and after the Term.

1.3 **Professional Services.** Customer may purchase SundaySky professional services in connection with its use of the Platform (the “**Professional Services**”), as provided in an Order.

1.4 **Customer Data.** Customer is responsible for providing all Customer Data used for Video distribution and Platform use, including without limitation, for the completeness and accuracy, quality and integrity of all Customer Data and Customer Materials (defined in Section 4.3). “**Customer Data**” means all data submitted, stored, posted, displayed, or otherwise transmitted by or on behalf of Customer for use in connection with the Platform and/or Professional Services, including without limitation personally identifiable information and other personalization information used in operation or provision of the Platform or Professional Services. Customer will provide an accurate and normalized production data feed in a mutually agreed format with the relevant data elements for each service provided to Customer’s customers and which will exclude any Restricted Data (defined in Section 5.3).

1.5 **Support Services; Uptime.** During the Term, SundaySky will provide support services for the Platform in accordance with the [SSKY Support Policy \(Standard Support Plan\)](#), and will provide the uptime standards for the Platform in accordance with the [SSKY Uptime SLA](#) (the “SLA”).

Article 2. Financial Terms

2.1 **Fees and Payment.** Customer will pay SundaySky an annual fee for use of the Platform in the amount set forth in the applicable Order (the “**Platform Access Fee**”) for the scope of Platform usage purchased in the applicable Order. For distribution over Owned Media, Customer will pay a fee for the number of Video Minutes used. “**Video Minutes**” means the number of seconds that all viewers play the Videos as tracked by the Video Player and aggregated monthly to determine the number of minutes. Video Minutes can be purchased either in pre-paid bundles for up to the amount shown in the Order, or in arrears based on use. All Fees are invoiced and due in advance except as otherwise stated in an Order, and payable on the frequency stated in the Order. Unless expressly provided otherwise in an Order, all Fees are due and payable by Customer 30 days from Customer’s receipt of the invoice. All fees and other amounts due hereunder (collectively, “**Fees**”) are stated in and are payable in U.S. dollars. Fees are based on SundaySky data and statistics which are determinative for all purposes hereunder, subject to the next sentence. Any pre-paid Video Minutes not used in the applicable initial or renewal Order Term cannot be carried over or applied towards into any future period, and Customer is not entitled to any credits, refunds or adjustments for any unused pre-paid items. Customer must give SundaySky notice of the basis for any good faith dispute regarding Fees invoiced within 30 days after the applicable invoice date (“**Disputed Fees**”). Disputed Fees will be due within 30 days after resolution of the dispute. Any late payments (other than Disputed Fees) will incur a late payment fee equal to the lesser of 1.5% per month, or the maximum amount allowable by law. Customer will reimburse SundaySky for reasonable and necessary travel and living expenses pre-approved in writing by Customer and incurred by SundaySky Personnel in performing its obligations hereunder and under any Order.

2.2 **Taxes.** All Fees owed pursuant to this Agreement and any Order are exclusive of any taxes, assessments and similar obligations that may be assessed on the Platform, Professional

Services or the rights granted hereunder, including, without limitation, sales, use, excise, value added, and withholding taxes. Customer will directly pay any such taxes assessed against it and Customer will promptly reimburse SundaySky for any such taxes payable or collectable by SundaySky (excluding taxes based on SundaySky's income, which remain SundaySky's responsibility).

Article 3. Confidentiality

3.1 **Non-disclosure and Non-use.** “**Confidential Information**” means all confidential or proprietary information, whether written or oral, in any form, either marked as confidential or proprietary or which a reasonable person would understand to be confidential under the circumstances surrounding disclosure. Each Party (the “**Receiving Party**”) agrees not to use any Confidential Information of the other Party (the “**Disclosing Party**”) for any purpose, other than to enforce its rights and perform its obligations hereunder. The Receiving Party agrees to protect the Disclosing Party's Confidential Information against disclosure to third parties using at least the same degree of care it uses for its own information of similar type, but no less than reasonable care, to avoid disclosure or misuse of the Confidential Information of the Disclosing Party. The Receiving Party will limit the disclosure of the Confidential Information to its employees, consultants, Affiliates, agents and subcontractors (“**representatives**”), who (a) have a “need to know” in order to perform the Receiving Party's obligations hereunder; (b) have been advised of the confidential nature thereof; and (b) are bound by obligations of non-disclosure and non-use of such Confidential Information substantially as protective as this Article. Each Receiving Party is responsible for any non-compliance by its representatives with this Article. A Receiving Party may disclose Confidential Information to the extent required by law or judicial process; provided that the Receiving Party will give the Disclosing Party advance notice of such requirement to the extent legally permitted.

3.2 **Exceptions.** Notwithstanding anything to the contrary, “Confidential Information” does not include information that is or becomes: (a) generally available to the public other than due to Receiving Party's breach of this Agreement; (b) rightfully received by the Receiving Party from a third party without confidentiality restrictions; (c) approved in writing for public release by the Disclosing Party; (d) lawfully known to the Receiving Party prior to receipt of such Confidential Information from the Disclosing Party; and/or (e) independently developed by the Receiving Party without use of or reference to such Confidential Information.

3.3 **Survival; Remedies.** The Parties' obligations regarding Confidential Information will survive termination of this Agreement for five (5) years, or as to any trade secret, for such longer time period as it is protected by applicable law. The Receiving Party agrees that monetary damages would be inadequate to compensate the Disclosing Party for breach of this Article, and that, in addition to any other remedies available at law or in equity, the Disclosing Party will be entitled to seek injunctive relief, without proving actual damages.

3.4 **Privacy Compliance.** Each Party will comply with its respective obligations under the applicable data protection laws. In particular, if Customer is established in the European Economic Area (“**EEA**”), in the United Kingdom (“**UK**”) or in California, or will, pursuant to this Agreement, provide SundaySky with personal data relating to an individual located within

the EEA, the UK or California, each Party will comply with the applicable Data Processing Addendum accessible [here](#) (“DPA”), which is incorporated into this Agreement by reference. Customer will be classified as the Data Controller and Business and SundaySky will be the Data Processor and Service Provider.

3.5 **Security of Customer Data.** SundaySky will: (i) implement appropriate administrative, physical and technical measures designed to protect the security and confidentiality of Customer Data against any accidental or illicit destruction, alteration or unauthorized access or disclosure to third parties; (ii) have measures in place designed to protect the security and confidentiality of Customer Data; and (iii) access and use the Customer Data solely to perform its obligations in accordance with and as expressly permitted in this Agreement and as may be required to comply with applicable law, in each case as described in the DPA.

Article 4. Ownership

4.1 **SundaySky Ownership.** Except for the limited rights expressly granted herein, SundaySky owns all right, title and interest, including all intellectual property rights, in and to the Platform (including templates, designs, pre-defined elements and standard offerings available in the Platform for use by Customer in creating Videos), documentation, integration, Professional Services, SundaySky’s trademarks, service marks, trade names, trade dress and associated logos (“**Marks**”), SundaySky Confidential Information and any other SundaySky materials furnished or made available hereunder, and all modifications and enhancements thereof, including all intellectual property rights in the foregoing (“**SundaySky Materials**”). Customer acknowledges that the use of the SundaySky provided materials available for use within the Platform, and which are part of the Platform are a compilation of pre-defined elements offered to SundaySky customers, are part of the SundaySky Materials, are not custom materials for Customer and are not owned by Customer. SundaySky has the worldwide, perpetual, irrevocable right to use aggregated, anonymized, and statistical data derived from the operation and use of the Platform and Professional Services (“**Statistical Data**”) for business and/or operating purposes, provided that SundaySky does not share with any third party Statistical Data which reveals the identity of Customer or Customer’s users. If Customer provides any suggestions, requests, template edits, corrections or other feedback relating to or made through the Platform or Professional Services (“**Feedback**”), Customer gives SundaySky a perpetual, irrevocable, royalty-free, transferable right to use the Feedback in any manner without restrictions, compensation or attribution.

4.2 **Customer Restrictions.** Customer will not: (a) reverse engineer, disassemble, decompile, modify or alter the Platform; (b) use the Platform or Professional Services for any unlawful purpose; (c) assign, sublicense, transfer, lease or share any right granted hereunder, except as expressly permitted hereunder; (d) use, distribute or display a Video through any means other than the Platform and the Video Player using Owned Media or Paid Media; (e) modify Static Videos. “**Third Party Materials**” means third party content (such as music and pictures), tools or services made available through the Platform for use by Customer. Customer agrees that it is solely responsible for obtaining any necessary rights and payment of any fees for use of the Third Party Materials beyond the scope of use described in this Section, Section 1.2 and Section 4.3. Use of Third Party Materials and access to certain optional functionalities of the

Platform may be subject to certain additional terms made available to Customer through the Platform or in a mutually agreed separate addendum to this Agreement, which are incorporated into and made a part of the Agreement.

4.3 Customer Ownership. Except for the limited rights expressly granted herein, Customer retains all right, title and interest in and to the Customer Materials, Customer Confidential Information, and Customer Marks, including any intellectual property rights therein. “**Customer Materials**” means any data, copy, media assets, voice over, or other materials that Customer provides or makes available to SundaySky in connection with this Agreement, including Customer Data, Customer Marks, as well as the websites (mobile and other wireless sites), owned and/or controlled by Customer. The Videos developed hereunder (but excluding the SundaySky Materials and Third Party Materials, if any), will be owned by Customer, provided that after the end of the Term, Customer may only distribute and display Static Videos as described in Section 1.2, and will no longer have any rights to use the Videos (other than the Static Videos). Customer grants SundaySky a limited, nonexclusive, nontransferable license to use the Customer Materials and Customer Marks as necessary and expressly approved by Customer and solely in connection with providing use of the Platform and the Professional Services hereunder. Customer is solely responsible for the completeness and accuracy, quality and integrity of all Customer Materials submitted to SundaySky.

Article 5. Warranties and Disclaimer

5.1 Mutual Warranties. Each Party represents, warrants and covenants to the other that: (a) it has the power and authority to enter into and perform its obligations under the Terms and each Order; and (b) the execution and performance of this Agreement by such Party does not conflict with any agreement or obligation to which it is a party or by which it is bound.

5.2 SundaySky Warranties. SundaySky represents, warrants and covenants that: (a) the Professional Services will be performed in a professional manner, consistent with industry standards; and (b) the Professional Services will materially conform to the requirements and specifications in the Terms and the applicable Order; (c) it uses industry standard methods to protect the Platform from any viruses, Trojan horses, worms or malicious code; (d) the Platform does not infringe upon or otherwise violate or misappropriate any third party intellectual property or other rights when used by Customer as permitted hereunder. As Customer’s sole and exclusive remedy, and SundaySky’s entire liability, for any breach of the foregoing warranties in clauses (a) – (c) above which are timely reported to SundaySky, SundaySky will re-perform the Professional Services so that they materially conform to the foregoing warranty.

5.3 Customer Warranties. Customer represents, warrants and covenants that (a) it uses industry standard methods to protect the Customer Materials from any viruses, Trojan horses, worms or malicious code, (b) Customer has sufficient rights and licenses to provide the Customer Materials to SundaySky hereunder, and SundaySky’s use of the Customer Materials as provided by Customer and in accordance with this Agreement does not and will not infringe or misappropriate the intellectual property of a third party or violate any applicable law, rule or regulation, (c) the Customer Materials will not contain obscene language, pornography or other adult only content, defamatory, racist or similar content, constitute a tort against a third party, or

violate any applicable law, and (d) any personally identifiable information transmitted to SundaySky or through the Platform, whether or not such information is part of the Customer Materials, will be collected and transmitted in compliance with Customer's applicable privacy policies and applicable law, rules, regulations and industry guidelines, and that in no event will any personally identifiable information be transmitted to SundaySky or the Platform without lawfully obtaining sufficient prior consent from the individual to whom such information pertains, and Customer will ensure that no personally identifiable information is provided to SundaySky or the Platform in violation of any opt-out requests. Customer will ensure that the Customer Data does not contain any highly sensitive information which is subject to laws or regulations that impose increased protections and/or obligations with respect to handling such information (e.g. social security number, passport number, driver's license or other state ID number, date of birth, payment card numbers or other personal financial information, or any information of any person under the age of 13) (together, "**Restricted Data**"). SundaySky may take remedial action if Customer violates this Section, however SundaySky has no obligation to review any Customer Materials for accuracy, compliance or potential liability.

5.4 **Disclaimer.** EXCEPT AS EXPRESSLY STATED IN THIS ARTICLE 5 OR IN AN ORDER, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. THE PLATFORM AND PROFESSIONAL SERVICES ARE PROVIDED "AS-IS" AND "AS-AVAILABLE", AND SUNDAYSKY DOES NOT WARRANT THAT (A) CUSTOMER'S USE OF THE PLATFORM OR PROFESSIONAL SERVICES WILL ACHIEVE ANY SPECIFIC BUSINESS RESULTS; OR (B) THE USE OR OPERATION OF THE PLATFORM OR PROFESSIONAL SERVICES WILL BE CONTINUOUS, UNINTERRUPTED OR ERROR-FREE.

Article 6. Indemnification; Limitation of Liability

6.1 **SundaySky's Indemnity.** SundaySky agrees to defend, indemnify and hold harmless Customer and/or its directors, officers, employees, agents and assigns (the "**Customer Indemnified Parties**") against third-party claims ("**Claims**") against any Customer Indemnified Party to the extent arising from or related to the Platform when used by Customer as permitted infringing any third party intellectual property rights. Customer will promptly notify SundaySky in writing of any Claim for which it seeks indemnification and will reasonably cooperate with SundaySky in the defense of such Claim. SundaySky will have sole control of such defense; *provided, that*, SundaySky will not settle a Claim unless the settlement includes an unconditional release of Customer from liability on the Claim or Customer has consented to such settlement. If the Platform, any Professional Services or Deliverables become, or in SundaySky's opinion is likely to become, the subject of an infringement Claim, SundaySky may at its option and expense, (x) procure for Customer the right to continue using such Professional Services and Deliverables; or (y) replace or modify it so that it becomes non-infringing while remaining functionally substantially similar; or (z) if neither of these options is reasonably available to SundaySky after reasonable efforts, cease to provide the Platform and Professional Services, and grant Customer a prompt refund for the prorated portion of any prepaid but unused fees. This Section 6.1 states SundaySky's entire liability with respect to an alleged or proven infringement, including any Claim of intellectual property infringement. SundaySky has no liability for any

infringement Claim to the extent based upon: (a) the combination of the Platform and/or any Professional Services with any equipment or materials not furnished by SundaySky; (b) Customer's modification of the SundaySky Materials; or (c) use of the SundaySky Materials in breach of this Agreement.

6.2 **Customer's Indemnity.** Customer agrees to indemnify, defend and hold harmless SundaySky and/or its directors, officers, employees, agents and assigns ("**SundaySky Indemnified Parties**") against any Claims made against any SundaySky Indemnified Party involving: (i) the Customer Materials when used by SundaySky as permitted under this Agreement, and (ii) any breach by Customer of this Agreement. SundaySky will promptly notify Customer in writing of any Claim for which it seeks indemnification and will reasonably cooperate with Customer in the defense of such Claim. Customer will have sole control of such defense; provided that, Customer will not settle a Claim unless the settlement includes an unconditional release of SundaySky from liability on the Claim or SundaySky has consented to such settlement. Customer has no liability for any infringement Claim to the extent based upon (a) the combination of the Customer Materials with the Platform or Professional Services, if a Claim would not have occurred but for such combination; (b) any modification of the Customer Materials by SundaySky not approved by Customer where SundaySky's modification caused the infringement; or (c) SundaySky's use of the Customer Materials in breach of this Agreement where SundaySky's breach caused the infringement.

6.3 **Limitation of Liability.** EXCEPT FOR A PARTY'S INDEMNITY OBLIGATIONS: (A) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOSS OF USE, DATA, BUSINESS OR PROFITS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE ORDERS, THE PLATFORM, THE PROFESSIONAL SERVICES OR ANY DELIVERABLES PROVIDED HEREUNDER, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (B) EACH PARTY'S TOTAL LIABILITY WILL NOT EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SUNDAYSKY BY CUSTOMER HEREUNDER FOR THE PLATFORM AND PROFESSIONAL SERVICES PROVIDED UNDER THE APPLICABLE ORDER IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY.

Article 7. Term; Termination

7.1 **Term.** The term of this Agreement begins on the Effective Date and continues for twelve (12) months, unless terminated earlier by either Party as permitted in this Agreement (the "**Initial Term**"). Thereafter, this Agreement will automatically renew for consecutive 12 month renewal terms (each a "**Renewal Term**", and together with the Initial Term, the "**Term**"), unless either party gives notice of non-renewal at least 60 days prior to expiration. The term of each Order (the "**Order Term**") is set forth in the applicable Order; provided that all Order's will terminate (notwithstanding any longer stated Order Term), on expiration or termination of this Agreement. Each Order will automatically renew for consecutive 12 month renewal term ("**Order Renewal Term**"), with an automatic Fee increase of 10% over the prior year for an

Order Renewal Term of 1 year, an 8% increase over the prior year for an Order Renewal Term of 2 years and 6% increase over the prior year for an Order Renewal Term of 3 years.

7.2 Termination; Suspension. Either Party may terminate this Agreement and/or an Order, as applicable, immediately upon written notice if: (a) the other Party is in breach of a material obligation under this Agreement or such Order, which is not cured within thirty (30) days of receipt of written notice from the non-breaching Party; (b) the other Party is in breach of a material obligation under this Agreement or such Order, which it is not entitled to cure, as specified herein, or which breach, by its nature, cannot be cured; or (c) the other Party becomes the subject of any voluntary or involuntary proceeding under any bankruptcy, insolvency or liquidation law, which is not resolved favorably to such Party within sixty (60) days of commencement thereof. SundaySky may suspend or discontinue providing the Platform and/or performing the Professional Services and/or may remove or make unavailable any Customer Materials if, in its reasonable judgment, it would violate any applicable law or if SundaySky reasonably believes Customer has breached this Agreement, or if use of the Platform through Customer's account is threatening the security, integrity, or availability of the Platform generally or otherwise causing immediate, material and ongoing harm to SundaySky or others. In such event, SundaySky will give Customer prompt notice after such suspension, removal or unavailability.

7.3 Effect of Termination. Termination of an Order will not terminate this Agreement with respect to any other Order then in effect. Upon any termination of this Agreement or any Order: (a) SundaySky will cease to provide, and Customer will cease use of, the Platform and Professional Services purchased under the relevant Order(s); (b) all licenses granted hereunder will immediately terminate as to the terminated Order or Agreement; (c) Customer will pay SundaySky all amounts due and outstanding hereunder; (d) each Party will return to the other Party any materials and Confidential Information of the other Party in its possession and control or will destroy such items and upon request of the other Party certify their destruction to the other Party; and (e) Articles 2, 3, 4, 5, 6, Section 7.3 and Article 8 will survive expiration or termination of this Agreement in accordance with such provisions.

Article 8. Miscellaneous

8.1 Force Majeure. Neither Party will be responsible for any failure or delay in its performance hereunder due to causes beyond its reasonable control, including, but not limited to, labor disputes, war, terrorism, riot, acts of God or governmental action.

8.2 Governing Law. This Agreement and each Order will be governed by the laws of the State of New York, except for its conflict of laws principles, and will be exclusively adjudicated in the federal and state courts located in New York, NY, and the Parties consent to exclusive personal jurisdiction and venue at such courts.

8.3 Notices. All notices given under this Agreement or any Order will be in writing and delivered by courier or overnight delivery service, or by certified U.S. mail, deemed given upon receipt. Notices will be sent to SundaySky at 111 Broadway, 19th Floor, NY, NY 10006, Attn. CFO with a copy to Finance-inc@sundaysky.com and to Customer at the address stated in the

Order, or in each case, such other address specified by a Party to the other Party in accordance with this Section.

8.4 **Assignment.** Neither Party may assign this Agreement or any Order without the prior written consent of the non-assigning Party, which approval will not be unreasonably withheld or delayed; provided that either Party may assign this Agreement and all Orders on prior written notice but without such consent: (i) to any of its Affiliates; or (ii) to an acquirer of the assigning Party's business to which this Agreement relates, in each case where the assignee has expressly assumed the assigning party's obligations hereunder.

8.5 **Entire Agreement; Amendments; Severability and Waiver.** This Agreement together with the Orders (and all terms incorporated therein by reference) constitutes the complete and exclusive agreement between the Parties concerning its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, concerning the subject matter of this Agreement. In case of any conflicts between the terms and conditions of (a) this Agreement and any incorporated terms, the terms and conditions of the incorporated terms will prevail, (b) this Agreement and any Order, the terms and conditions of the Order will prevail, but solely with respect to such Order. This Agreement and any Order may not be modified or amended, or any right waived, except in a writing signed by each Party. If any provision of this Agreement is held to be invalid or unenforceable, the remainder will remain in full force and effect. The waiver by either Party of any breach of this Agreement will not constitute a waiver of any other or subsequent breach.

8.6 **Relationship; Publicity.** The Parties are independent contractors and nothing creates any employer-employee, partnership, joint venture, agency, or any other relationship. Neither Party will, without the other Party's prior written approval, (i) make any public communication regarding this Agreement or the relationship of the Parties; or (ii) use the name or any Mark of the other Party except as contemplated herein.