

DREAMSTALK STUDIOS INC.

SaaS Agreement Terms & Conditions

1. ACCESS AND ASSUMPTION OF RISK

- 1.1. **API.** Dreamstalk will allow the Customer (as defined in the applicable SaaS Agreement) reasonable use of the application programming interface of Dreamstalk, which may be used to interact with the Service from third-party software applications, (the "API") and will provide the Customer with **[one]** week's notice in advance of any change to the functionality of the API that, to the knowledge of Dreamstalk, may impact the Customer's use of the API.
- 1.2. **Assumption of risk.** The Customer acknowledges that the service (the "Service") described in the applicable SaaS Agreement (the "Agreement") require the use of the Internet and the Internet is made up of many different networks, most of which are outside the control of Dreamstalk. The Customer agrees that it assumes the entire risk as to the use, availability, reliability, timeliness, quality, security and performance of the Service to the extent that any of those elements are beyond the control of Dreamstalk, it being further acknowledged that the foregoing does not diminish the warranty of Dreamstalk for its own software and servers.
- 1.3. **Suspension of User Access.** Upon the Customer's request, Dreamstalk will immediately suspend or disable general access or the access of any specific end users ("Users") of the Service subscribed for under the Agreement and, upon the Customer's request, restore such access. During the term of the Agreement (the "Term"), and except as otherwise provided in the Agreement, Dreamstalk shall not suspend, disable, or restore such access without the Customer's consent.

2. INTELLECTUAL PROPERTY RIGHTS

- 2.1. **Title.** Dreamstalk warrants that it has all rights necessary to grant the license to use the Service described in the Agreement to the Customer. Title to the software comprising the Service (excluding: (i) all materials and intellectual property created, acquired, or licensed by Customer and provided to Dreamstalk (whether or not created, acquired or licensed by Customer independently of, or as part of, the work undertaken pursuant to the Agreement), including all content, information, documentation, data, designs, specifications, and names, trade names, trade-marks, and logos used by Customer, and any modifications, enhancements, adaptations or derivative works of any of the foregoing, or (ii) any and all data, including personal information, that is collected from any User of the Service ("**User Data**") included therein) shall at all times remain with Dreamstalk. The Customer acknowledges that the Service is proprietary to Dreamstalk and that all rights thereto, including all patents, inventions, trade-marks, service marks, registered designs, integrated circuit, topographies, including applications for any of the foregoing, as well as copyrights, design rights, know-how, confidential information, trade secrets, and any other similar rights in any country (collectively, "**Intellectual Property Rights**"),

are owned by Dreamstalk. The Customer further acknowledges that the software applications comprising the Service contains trade secrets of Dreamstalk and that the Service is protected by Canadian and international copyright and other intellectual property laws and treaties. Under no circumstances will a copy of the software comprising the Service be provided to the Customer.

- 2.2. **Prohibition on reverse engineering.** The Customer shall not copy, translate, disassemble or decompile or reverse engineer or directly or indirectly allow or cause a third party to reverse engineer the whole or any part of the Software.
- 2.3. **No violation of third party Intellectual Property rights.** If Dreamstalk believes or it is determined that any part of the software comprising the Service may have violated a third party's Intellectual Property Rights, Dreamstalk may choose to: (i) modify the Service to be non-infringing (while substantially preserving their utility); (ii) replace the Service with a compatible, functionally equivalent, non-infringing product; or (iii) obtain a license to allow for continued use. If the foregoing alternatives are not commercially reasonable, Dreamstalk may terminate the Agreement.
- 2.4. **Customer representations and warranties.** Customer represents and warrants that it either owns or has permission to use any intellectual property including User Data, text, graphics, photos, designs, trademarks, or other artwork that it provides to Dreamstalk for inclusion in the Service, and it hereby grants Dreamstalk a license to use such intellectual property during the Term to the extent necessary to provide the Service, in accordance with the Agreement.
- 2.5. **Grant of license.** The Customer hereby grants Dreamstalk a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Service (and similar services provided to third parties by Dreamstalk) any suggestion, enhancement request, recommendation, correction or other feedback provided by the Customer or Users relating to the operation of the Service.

3. SECURITY OF USER DATA AND PRIVACY

3.1. Dreamstalk's obligations.

- 3.1.1. The Customer acknowledges and agrees that, in the course of providing the Service, Dreamstalk may collect, use, store, retain, transfer, disclose and/or dispose of ("**Handle**" or "**Handling**") User Data and, in the course of its provision of payment processing services, Stripe Connect may Handle User Data. In addition, Stripe Connect may collect information directly from the Customer and Users by way of internet cookies or other means.
- 3.1.2. Dreamstalk's Handling of User Data is subject to Dreamstalk's "Privacy and Security Policy" in effect from time to time, as posted to its website and Stripe Connect's Handling of User Data is subject to Stripe Connect's "Privacy Policies", in effect from time to time, as posted on Stripe Connect's website.

- 3.1.3. Stripe Connect may transfer, process, or store User Data outside of Canada and User Data may be subject to disclosure by Stripe Connect as required by law, as set forth in Stripe Connect's Privacy Policy.
- 3.1.4. Dreamstalk will only Handle User Data in its possession to the extent required to provide the Service and shall perform its obligations under the Agreement in compliance with all applicable Canadian privacy laws. Without limiting the generality of the foregoing:
- (a) Dreamstalk shall take all reasonable measures to ensure that User Data in its custody or control is protected against theft, loss and unauthorized use or disclosure.
 - (b) Whenever Dreamstalk transfers User Data over the internet, it will employ appropriate cryptographic protocols such as Secure Sockets Layer (SSL) encryption.
 - (c) Dreamstalk shall keep confidential all User Data and will not disclose User Data to third parties (which for clarity does not include Stripe Connect, its employees and agents, to the extent such persons require such User Data for the purpose of Dreamstalk's provision of the Service), except as may be required by law.
 - (e) Dreamstalk will notify the Customer immediately upon becoming aware that any User Data has been stolen, lost, or accessed by unauthorized persons.
- 3.1.6. Storage of User Data shall remain with Dreamstalk and/or Stripe Connect or their agents during the Term. If the Customer submits a written request to Dreamstalk within 30 Business Days of the termination of the Agreement, Dreamstalk shall provide the Customer a copy of all User Data in its possession and written confirmation of the deletion of all User Data from all servers under its control.

3.2 **Customer's obligations.**

- 3.2.1 The Customer shall not Handle User Data except in compliance with applicable privacy laws, the laws, rules and regulations governing the use of credit card data, and, if applicable, the Payment Card Industry Data Security Standards. The Customer is solely responsible for the use of User Data and the Service by its employees, contractors, agents and representatives, and shall ensure that all such persons comply with applicable laws, including applicable privacy laws, the laws, rules and regulations governing the use of credit card data, and, if applicable, the Payment Card Industry Data Security Standards, regarding the Handling of User Data. Without limiting the foregoing, the Customer is solely responsible for obtaining all necessary rights and all consents required under applicable law to disclose to Dreamstalk or Stripe or to allow Dreamstalk or Stripe to collect, use, retain

and disclose any User Data or Cardholder Data, including information that Dreamstalk or Stripe may collect directly from Users via internet cookies or other means.

- 3.2.2 The Customer is solely responsible for verifying the identity of Users and the eligibility of each payment card used by Users in connection with the Service.
- 3.2.3 If the Customer uses the Service to collect waivers or releases of liability from Users, the Customer is solely responsible for ensuring that such waivers comply with all applicable laws and regulations in the relevant jurisdiction(s) of the Customer, including, but not limited to, the content and storage of any such releases and waivers of liability.
- 3.2.2. The Customer shall take all reasonable measures to ensure that the Service is protected against use or access by unauthorized persons.
- 3.2.3. The Customer shall notify Dreamstalk at the first reasonable opportunity if it becomes aware that any User Data accessible through the Service is stolen, lost, or accessed by unauthorized persons.
- 3.2.4. The Customer will not use the Service to store or transmit (i) infringing, libelous, or otherwise unlawful or tortious material, (ii) material in violation of third-party privacy rights, (iii) code, files, scripts, agents or programs intended to do harm, including, for example, computer viruses or malware, or (iv) such other material that Dreamstalk may deem offensive, acting reasonably.
- 3.2.5. The Customer's access to the Service is subject to Dreamstalk's reasonable rules and restrictions in effect from time to time. Dreamstalk will provide the Customer notice in writing of any such rules and restrictions or changes thereto.

4. CONNECTED ACCOUNT AGREEMENT

- 4.1. The Customer consents, through its use of the Stripe Connect payment service, to the terms and conditions of the Stripe Connect Connected Account Agreement governing the Customer's use of Stripe Connect located at <https://stripe.com/connect/account-terms>.

5. CONFIDENTIALITY

- 5.1. **Definition of Confidential Information.** "Confidential Information" means all information disclosed by a party (the "Disclosing Party") to the other party (the "Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Dreamstalk's Confidential Information includes the Service, and each party's Confidential Information includes the terms and conditions of the Agreement (including pricing), as well as business

and marketing plans, technology and technical information, product plans and designs and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) is received from a third party without breach of any obligation owed to the Disclosing Party; or (iv) was independently developed by the Receiving Party.

- 5.2. **Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind (but not less than reasonable care): (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of the Agreement; and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its employees and contractors who need that access for purposes consistent with the Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of the Agreement to any third party other than Stripe Connect, its affiliates, legal counsel and accountants without the other party's prior written consent. Notwithstanding the foregoing, Dreamstalk may use the Customer's name and Corporate Logo referring to them as a user of the Service but Dreamstalk shall not indicate that Customer recommends the use of the Service without first obtaining the Client's written consent.
- 5.3. **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.
- 5.3 Dreamstalk and Customer agree that in the event of a breach or threatened breach of this Section 4, the harm suffered by Dreamstalk and Customer would not be compensable by monetary damages alone and, accordingly, in addition to other available legal or equitable remedies, Dreamstalk and Customer shall be entitled to apply for an injunction or specific performance with respect to such breach or threatened breach, without proof of actual damages (and without the requirements of posting a bond or other security) and Dreamstalk and Customer agree not to plead sufficiency of damages as a defense.

5.4 The obligations of Dreamstalk and Customer contained in this Section 4 shall survive the termination of the Agreement and shall be binding on Dreamstalk's and Customers' successors and assigns.

6. INDEMNITY

6.1. **Indemnification by Dreamstalk.** Subject to Section 7, Dreamstalk shall, both during and following the Term, indemnify and save harmless the Customer and its officers, directors, employees and agents from and against any and all losses, liabilities, damages or out-of-pocket expenses (including reasonable legal fees and expenses) whether resulting from an action, suit, proceeding, arbitration, claim or demand that is instituted or asserted by a third party, or a cause, matter, thing, act, omission or state of facts not involving a third party ("**Damages**") incurred or suffered by any of those indemnified persons where such Damages were caused by any grossly negligent act or omission of Dreamstalk.

6.2. **Indemnification by Customer.** The Customer shall, both during and following the Term, indemnify and save harmless Dreamstalk and its officers, directors, employees and agents from and against any and all Damages incurred or suffered by any of those indemnified persons where such Damages were caused by:

- (a) a breach by the Customer of its obligations under the Agreement;
- (b) unauthorized use of the Customer's identification codes or passwords; and/or
- (c) any wilful, unlawful or negligent act or omission of the Customer.

7. LIMITATION OF LIABILITY

7.1. **Exclusion of consequential and related damages.** In no event shall Dreamstalk or its affiliates and/or related companies, including their respective predecessors and successors, agents, contractors, employees, officers or directors, be liable to the Customer or any third party for lost profits, lost revenues, lost savings, or general, incidental, consequential, direct, indirect, punitive or special damages howsoever arising, including without limitation arising out of the operation of or inability to operate the Service.

7.2. **Chargebacks.** In no event shall Dreamstalk be liable to Customer, any User or any third party for any payment card transactions booked through Stripe Connect including, but not limited to, payment card transactions that are authorized or completed and later charged back to the payee or for any Damages caused or resulting from the conduct or policies of Stripe Connect.

7.3 **Users.** In no event shall Dreamstalk be liable to Customer, any User or any third party for any claims made by Users for any damages resulting from any User's use of the products or services provided by the Customer to Users.

7.4. **Mutual limitation of liability.** Neither party's liability with respect to any single incident arising out of or relating to the Agreement will exceed the amount of Service Fees (as defined in the Agreement) paid by the Customer in the twelve (12) months preceding the incident. The above limitations apply whether an action is under contract, tort (including without limitation, negligence and strict liability), or any other legal theory, provided that the above limitations will not apply to limit the Customer's payment obligations under Section 5 of the Agreement.

7.5. **Sole remedy for breach by Dreamstalk.** The Customer's sole remedy for a breach by Dreamstalk of any of its representations, warranties, covenants or obligations under the Agreement will be, at Dreamstalk's option, to: (i) provide the Service free of charge for an equivalent period of time to the period of time, if any, during which the Service was unavailable to Users due to Dreamstalk's breach of the Agreement; or (ii) refund (or waive payment of) all or part of the Service Fees paid in respect of any period during which there was a breach of the Agreement by Dreamstalk.

8. DEEMED ACCEPTANCE OF TERMS OF USE

8.1 Customer acknowledges that it has read and understood the Dreamstalk Terms of Use located at <http://www.dreamstalk.ca/terms.php> and agrees that by executing the Agreement it has accepted all of the terms in the Dreamstalk Terms of Use.

9. GOVERNING LAW AND DISPUTE RESOLUTION

9.1. **Governing Law.** This Agreement is governed by and will be interpreted and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein.

9.2. **Dispute Resolution.** In the event of a dispute, claim, question or difference arising out of or in connection with the Agreement, or in respect of any legal relationship arising out of or in connection with the Agreement (a "**Dispute**"), Dreamstalk and Customer will attempt to settle the Dispute by negotiation. If such Dispute has not been resolved, for any reason, within thirty (30) business days of each party becoming aware of such Dispute, Dreamstalk will have the option, at its sole discretion, to elect whether to resolve the Dispute by arbitration, mediation or submission of the Dispute to the courts of the province of British Columbia situated in the City of Vancouver. Such option will be exercisable by Dreamstalk by providing written notice to the Customer within ten (10) business days of the expiration of the thirty (30) day negotiation period. If such option is not exercised by Dreamstalk in accordance with this Section, then each party will irrevocably attorn and submit to the non-exclusive jurisdiction of the British Columbia courts situated in the City of Vancouver, and will waive objection to the venue of any proceeding in such court or that such court provides an inconvenient forum.

10. GENERAL

10.1. **Assignment.** The Customer may not transfer or assign its rights and obligations under the Agreement without obtaining Dreamstalk's prior written consent.

- 10.2. **Amendments.** Except as set out herein, the Agreement may not be modified or amended except by written amendment executed by Dreamstalk and Customer. Notwithstanding the foregoing, the Customer acknowledges that Dreamstalk may amend the terms of the Agreement by posting notice to the **[Client Service Portal]** (which shall constitute notice for the purposes of Section 9) to accommodate changes in the provision of the Service.
- 10.3. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between Dreamstalk and Customer with respect to the matters dealt with herein. All previous agreements, understandings, and representations, whether written or oral, between Dreamstalk and Customer have been superseded by the Agreement. For greater certainty, the Customer warrants that it has not relied on any representation made by Dreamstalk which has not been stated expressly in the Agreement, or upon any descriptions, illustrations or specifications contained in any document including publicity material produced by Dreamstalk.
- 10.4. **Relationship of** Dreamstalk and Customer. Dreamstalk and Customer are independent contractors. This Agreement does not create a partnership, joint venture, agency, fiduciary or employment relationship between Dreamstalk and Customer.
- 10.5. **Severability.** Any provision of the Agreement which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective only to the extent of such invalidity or unenforceability and shall be severed from the balance of the Agreement without invalidating or affecting the remaining provisions of the Agreement in that or any other jurisdiction, which remaining provisions shall continue in full force and effect.
- 10.6. **Waiver.** No provision of the Agreement may be waived except in writing signed by the party providing the waiver. No failure or delay by either party in exercising any right under the Agreement will constitute a waiver of that right.
- 10.7. **Execution.** The Agreement may be executed in counterparts by Dreamstalk and Customer, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement, provided that the Agreement shall be of no force and effect until the counterparts are exchanged. Transmission of an executed signature page by email or other electronic means is as effective as a manually executed counterpart of the Agreement