

## **Proto Media Services and End User License Agreement**

These terms and conditions create a contract between you and Proto (the “Agreement”). Please read the Agreement carefully. To confirm your understanding and acceptance of the Agreement, click “Agree.”

### **A. INTRODUCTION TO OUR SERVICES**

This Agreement governs your use of Proto’s services (“Services”), through which you can buy, get, license, rent or subscribe to content, Apps (as defined below), and other in-app services (collectively, “Content”). Content may be offered through the Services by Proto or a third party. Our Services are available for your use in your country or territory of residence (“Home Country”). By creating an account for use of the Services in a particular country or territory you are specifying it as your Home Country. To use our Services, you need compatible hardware, software (latest version recommended and sometimes required) and Internet access (fees may apply). Our Services’ performance may be affected by these factors.

### **B. USING OUR SERVICES**

#### **PAYMENTS, TAXES, AND REFUNDS**

You can acquire Content on our Services for free or for a charge, either of which is referred to as a “Transaction.” Each Transaction is an electronic contract between you and Proto, and/or you and the entity providing the Content on our Services.

Proto will charge your selected payment method (such as your credit card, debit card or gift card/code) for any paid Transactions, including any applicable taxes. If we cannot charge your selected payment method for any reason (such as expiration or insufficient funds), you remain responsible for any uncollected amounts, and we will attempt to charge the payment method again as you may update your payment method information. If you preorder Content, you will be charged when the Content is delivered to you (unless you cancel prior to the Content’s availability). In accordance with local law, Proto may update information regarding your selected payment method if provided such information by your financial institution.

All Transactions are final. Content prices may change at any time. If technical problems prevent or unreasonably delay delivery of Content, your exclusive and sole remedy is either replacement of the Content or refund of the price paid, as determined by Proto. From time to time, Proto may refuse a refund request if we find evidence of fraud, refund abuse, or other manipulative behavior that entitles Proto to a corresponding counterclaim.

#### **ACCOUNT**

Using our Services and accessing your Content may require a Proto ID. A Proto ID is the account you use across Proto’s ecosystem. Your account is valuable, and you are responsible for maintaining its confidentiality and security. Proto is not responsible for any losses arising from the unauthorized use of your account. Please contact Proto if you suspect that your account has been compromised. You must be age 13 (or equivalent minimum age in your Home Country, as set forth in the registration process) to create an account and use our Services. Proto IDs for persons under this age can be created by a parent or legal guardian using Family Sharing or by an approved educational institution.

#### **PRIVACY**

Your use of our Services is subject to Proto’s Privacy Policy, which is available at [www.protohologram.com](http://www.protohologram.com).

Additional information about how Proto processes data in connection with AI Avatars, Personas, and related AI features, including the third-party AI providers involved, is described in the Proto Privacy Policy and in the Proto AI Provider and Subprocessor Notice.

## SERVICES AND CONTENT USAGE RULES

Your use of the Services and Content must follow the rules set forth in this section (“Usage Rules”). Any other use of the Services and Content is a material breach of this Agreement. Proto may monitor your use of the Services and Content to ensure that you are following these Usage Rules.

### All Services:

- Proto’s delivery of Services or Content does not transfer any commercial or promotional use rights to you, and does not constitute a grant or waiver of any rights of the copyright owners.
- Manipulating play counts, downloads, ratings, or reviews via any means — such as (i) using a bot, script, or automated process; or (ii) providing or accepting any kind of compensation or incentive — is prohibited.
- It is your responsibility not to lose, destroy, or damage Content once downloaded. We encourage you to back up your Content regularly.
- You may not tamper with or circumvent any security technology included with the Services.
- You may access our Services only using Proto’s software, and may not modify or use modified versions of such software.

### App Store Content:

- The term “Apps” includes apps and app clips for any Proto platform and/or operating system, including any in-app purchases, extensions, stickers, and subscriptions made available in such apps or app clips.

## DOWNLOADS

You may be limited in the amount of Content you may download, and some downloaded Content may expire after a given amount of time after downloaded or first played. Certain Content may not be available for download at all.

You may be able to redownload previously acquired Content (“Redownload”) to your devices that are signed in with the same Proto ID (“Associated Devices”). Content may not be available for Redownload if that Content is no longer offered on our Services.

## SUBSCRIPTIONS

The Services and certain Apps may allow you to purchase access to Content or Services on a subscription basis (“Paid Subscriptions”). Paid Subscriptions automatically renew until cancelled in the Manage Subscriptions section of your account settings. To learn more about cancelling your subscriptions, visit [www.protohologram.com](http://www.protohologram.com). We will notify you if the price of a Paid Subscription increases and, if required, seek your consent to continue. You will be charged no more than 24 hours prior to the start of the latest Paid Subscription period. If we cannot charge your payment method for any reason (such as expiration or insufficient funds), you remain responsible for any uncollected amounts, and we will attempt to charge the payment method as you may update your payment method information. This may result in a change to the start of your next Paid Subscription period and may change the date on which you are billed for each period. We reserve the right to cancel your Paid Subscription if we are unable to successfully charge your payment method to renew your subscription.

Certain Paid Subscriptions may offer a free trial prior to charging your payment method. If you decide to unsubscribe from a Paid Subscription before we start charging your payment method, cancel the subscription at least 24 hours before the free trial ends. If you start a free trial to a Paid Subscription offered by Proto as Content provider (an “Proto Paid Subscription”) and cancel before it ends, you cannot reactivate the free trial.

When your Paid Subscription to any Service ends, you will lose access to any functionality or Content of that Service that requires a Paid Subscription.

#### CONTENT AND SERVICE AVAILABILITY

Terms found in this Agreement that relate to Services, Content types, features or functionality not available in your Home Country are not applicable to you unless and until they become available to you. Certain Services and Content available to you in your Home Country may not be available to you when traveling outside of your Home Country.

#### THIRD-PARTY DEVICES AND EQUIPMENT

If you use our Services on a non-Proto-branded device, you may not be able to access all features or Content types. Terms in this Agreement relating to unavailable features or Content types are not applicable to you. If you later choose to access our Services from a Proto-branded device, you agree that all terms of this Agreement will apply to your use on such device. Additionally, certain Services may require, direct, or suggest you use third-party equipment in some circumstances and/or for certain activities; such use is subject to the terms and conditions of such equipment and should be made in accordance with the applicable manufacturer's instructions.

### C. YOUR SUBMISSIONS TO OUR SERVICES

Our Services may allow you to submit or post materials such as comments, ratings and reviews, pictures, videos, and podcasts (including associated metadata and artwork). Your use of such features must comply with the Submissions Guidelines below, which may be updated from time to time. If you see materials that do not comply with the Submissions Guidelines, please report this to Proto.

You hereby grant Proto a worldwide, royalty-free, perpetual, nonexclusive license to use the materials you submit within the Services and related marketing, and Proto internal purposes. Proto may monitor and decide to remove or edit any submitted material.

Submissions Guidelines: You may not use the Services to:

- post any materials that (i) you do not have permission, right or license to use, or (ii) infringe on the rights of any third party;
- post personal, private or confidential information belonging to others;
- post child pornography or harmful acts against a minor;
- request personal information from a minor;
- impersonate or misrepresent your affiliation with another person, or entity;
- post, modify, or remove a rating or review in exchange for any kind of compensation or incentive;
- post a fake rating or review;
- plan or engage in any illegal, fraudulent, or manipulative activity.

If you find content that violates this policy, report it to Proto.

Don't post content to your Proto device if it fits any of the descriptions noted below.

- Inciting others to commit violent acts against individuals
- Fights involving minors
- Content where there's infliction of unnecessary suffering or harm deliberately causing an animal distress.
- Content where animals are encouraged or coerced to fight by humans

Please note this is not a complete list.

#### **USER CONTENT; PROCESSING; OUTPUT RIGHTS.**

By submitting, uploading, or otherwise providing any data, prompts, media, or other content (including, for AI Avatars and Personas, prompts, context, system prompts, microphone audio, transient transcripts, generated text, generated audio, and avatar, voice, and likeness materials) (“Inputs”) to the Services, you authorize Proto, its affiliates, and its subprocessors to access, process, store, transmit, and transform such Inputs as necessary to provide the Apps and Services, including to generate, deliver, or re-credit outputs (“Outputs”).

As between the parties, you retain all rights, title, and interest in and to your Inputs, and Proto claims no ownership in them; however, you grant Proto a non-exclusive, worldwide, royalty-free license to use, reproduce, modify, and process Inputs solely to provide, maintain, secure, and improve the Services (including quality assurance, troubleshooting, optimization, and abuse detection).

Subject to your compliance with this EULA and the applicable Media Services terms, Proto grants you a non-exclusive license to use Outputs for your internal and permitted commercial purposes, acknowledging that Outputs may be partially or wholly generated by artificial intelligence and may not be unique, may not be eligible for copyright protection, and may be similar or identical to Outputs generated for other users.

You are solely responsible for ensuring that your Inputs and use of Outputs comply with all applicable laws, do not infringe third-party rights, and are not defamatory, unlawful, or harmful.

If Proto receives a credible claim alleging that specific Inputs or Outputs infringe intellectual property or other rights, Proto may remove, disable access to, or request modification of such content, and may suspend related jobs pending resolution.

The Credit Ledger, consumption terms, refunds, and re-crediting procedures described in the Credit System and Refund & Warranty Policy apply to all processing of Inputs and generation of Outputs.

You acknowledge that Proto makes no representations or warranties regarding the accuracy, originality, or non-infringement of Outputs, that Outputs may contain inaccuracies or require human review, and that you assume all risk associated with their use.

#### **AI AVATARS, PERSONAS, AND LIVE CONVERSATIONAL FEATURES.**

**Live AI Inputs and Outputs.** For AI Avatars and Personas, “Inputs” also include prompts, context, system prompts, microphone audio, transient transcripts, and avatar, voice, and likeness materials provided or routed to the Services during a live session. “Outputs” also include generated text, generated audio, synthesized speech, and avatar responses. Outputs may not be unique, may be inaccurate, incomplete, delayed, biased, offensive, or unsuitable, and may require independent review before use or reliance. You are responsible for all Inputs and Outputs used or deployed by you or your end users.

**Live processing and storage.** When a Persona is played, microphone audio or other input may be processed to recognize speech, generate a response, and synthesize spoken output through the selected avatar, in always-listening or push-to-talk mode as configured by you. For Persona interactions, Proto does not store raw microphone audio, live conversation transcripts, generated Persona responses, or live conversation history. Live audio, transient transcripts, generated text, generated audio, and related session data may nonetheless be temporarily created, transmitted, transformed, cached, buffered, or processed as necessary to operate the feature and to route data among Proto systems and third-party AI providers. Proto may store persona configuration, prompts and context saved by you, avatar and license records, consent materials, playback and credit records, provider usage counts, session metadata, and other usage metadata.

Third-party AI providers. You authorize Proto, its affiliates, service providers, and subprocessors to access, process, transmit, transform, and return Inputs and Outputs as reasonably necessary to provide these features, including through third-party providers for avatar generation, consent verification, speech-to-text, large language model processing, text-to-speech, hosting, security, moderation, analytics, metering, support, and abuse prevention. PROTO DOES NOT REPRESENT, WARRANT, OR COVENANT THAT THIRD-PARTY AI PROVIDERS WILL REFRAIN FROM RETAINING, REVIEWING, MODERATING, USING, IMPROVING SERVICES WITH, IMPROVING MODELS WITH, OR TRAINING ON INPUTS OR OUTPUTS. Proto does not use live Persona conversation audio, live transcripts, generated Persona responses, or live conversation history to train Proto-owned models.

Likeness, voice, and consent. You represent and warrant that you have obtained all rights, consents, permissions, licenses, and releases required for any avatar, voice, likeness, name, image, video, or persona used with these features, including for commercial use, public display, interactive use, synthetic speech, and generated Outputs. You may not use these features to impersonate any person or to falsely suggest sponsorship, endorsement, employment, affiliation, or authorization, and you may not create or deploy avatars or personas based on employees, executives, celebrities, public figures, deceased persons, minors, fictional or copyrighted characters, or third-party brands without all required rights and permissions. Proto's receipt, storage, or acceptance of a consent video does not constitute legal advice, rights clearance, identity verification, or confirmation that you have obtained all rights required for your intended use.

End-user notice and public deployments. You are solely responsible for providing all notices and obtaining all consents required for your deployment, including notifying end users that they are interacting with an AI-powered persona and that their voice, audio, utterances, prompts, or other inputs may be processed by Proto and third-party AI providers. This includes deployments in public spaces, workplaces, events, retail locations, schools, healthcare settings, government settings, and financial-services settings in which persons may interact with a persona without signing in to Proto Cloud. You are responsible for compliance with applicable recording, wiretapping, biometric, consumer-protection, and AI-transparency laws.

No professional or high-impact reliance. These features are not a substitute for professional advice, human judgment, emergency services, medical, legal, or financial advice, or safety-critical instructions, and must not be used to make or substantially influence consequential decisions about an individual's eligibility, rights, benefits, employment, housing, credit, healthcare, education, financial status, legal status, or access to essential services without legally required human review, notices, consents, and safeguards.

Credits. AI Avatar and Persona features may consume Credits based on playback time, active speaking duration, speech-to-text usage, text-to-speech usage, model usage, provider calls, session duration, routing, hosting, or other metered events. Credits may be deducted at the beginning of an increment and recalculated in real time, and are tracked through the Credit Ledger.

Supplemental terms. Your use of AI Avatars, Personas, and related AI features is also governed by the Proto AI Avatars and Personas Supplemental Terms, which are incorporated into this Agreement by reference. In the event of a conflict with respect to AI Avatars, Personas, or related AI features, the Supplemental Terms control.

#### **D. PERSONALIZED RECOMMENDATION FEATURES**

The Services may recommend Content to you based on your downloads, purchases and other activities. You may opt out from receiving such personalized recommendations for some Services in your account settings. Some recommendation features may require your permission before they are turned on. If you turn on these features, you will be asked to give Proto permission to collect and store certain data, including but not limited to data about your device activity, location, and usage. Please carefully read the information presented when you turn on these features.

## **E. ADDITIONAL APP STORE TERMS**

### **LICENSE OF APP STORE CONTENT**

App licenses are provided to you by Proto or a third party developer (“App Provider”). If you are a customer of Proto, the merchant of record is Proto, Inc., which means that you acquire the App license from Proto but the App is licensed by the App Provider. An App licensed by Proto is a “Proto App;” an App licensed by an App Provider is a “Third Party App.” Proto acts as an agent for App Providers in providing the App Store and is not a party to the sales contract or user agreement between you and the App Provider. Any App that you acquire is governed by the Licensed Application End User License Agreement (“Standard EULA”) set forth below, unless Proto or the App Provider provides an overriding custom license agreement (“Custom EULA”). The App Provider of any Third Party App is solely responsible for its content, warranties, and claims that you may have related to the Third Party App. You acknowledge and agree that Proto is a third party beneficiary of the Standard EULA or Custom EULA applicable to each Third Party App and may therefore enforce such agreement. Certain Apps may not appear on the device but can be accessed and used elsewhere.

### **IN-APP PURCHASES**

Apps may offer content, services or functionality for use within such Apps (“In-App Purchases”). In-App Purchases that are consumed during the use of the App cannot be transferred among devices and can be downloaded only once. You must authenticate your account before making In-App Purchases – separate from any authentication to obtain other Content – by entering your password or using Touch ID or Face ID, if applicable. You will be able to make additional In-App Purchases for fifteen minutes without re-authenticating unless you’ve asked us to require a password for every purchase or have enabled Touch ID or Face ID, if applicable. You can turn off the ability to make In-App Purchases by following these instructions: [www.protohologram.com](http://www.protohologram.com).

### **APP MAINTENANCE AND SUPPORT**

Proto is responsible for providing maintenance and support for Proto Apps only, or as required under applicable law. App Providers are responsible for providing maintenance and support for Third Party Apps.

### **APP BUNDLES**

Some Apps may be sold together as a bundle (“App Bundle”). The price displayed with an App Bundle is the price you will be charged upon purchasing the App Bundle. The App Bundle price may be reduced to account for Apps you have already purchased or acquired, but may include a minimum charge to complete the App Bundle.

### **LICENSED APPLICATION END USER LICENSE AGREEMENT**

Apps made available through the App Store are licensed, not sold, to you. Your license to each App is subject to your prior acceptance of either this Licensed Application End User License Agreement (“Standard EULA”), or a custom end user license agreement between you and the Application Provider (“Custom EULA”), if one is provided. Your license to any Proto App under this Standard EULA or Custom EULA is granted by Proto, and your license to any Third Party App under this Standard EULA or Custom EULA is granted by the Application Provider of that Third Party App. Any App that is subject to this Standard EULA is referred to herein as the “Licensed Application.” The Application Provider or Proto as applicable (“Licensor”) reserves all rights in and to the Licensed Application not expressly granted to you under this Standard EULA.

a. Scope of License: Licensor grants to you a nontransferable license to use the Licensed Application on any Proto-branded products that you own or control and as permitted by the Usage Rules. The terms of this Standard EULA will govern any content, materials, or services accessible from or purchased within the Licensed Application as well as upgrades provided by Licensor that replace or supplement the original Licensed

Application, unless such upgrade is accompanied by a Custom EULA. Except as provided in the Usage Rules, you may not distribute or make the Licensed Application available over a network where it could be used by multiple devices at the same time. You may not transfer, redistribute or sublicense the Licensed Application and, if you sell your Proto Device to a third party, you must remove the Licensed Application from the Proto Device before doing so. You may not copy (except as permitted by this license and the Usage Rules), reverse-engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Licensed Application, any updates, or any part thereof (except as and only to the extent that any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by the licensing terms governing use of any open-sourced components included with the Licensed Application).

b. Consent to Use of Data: You agree that Licensor may collect and use technical data and related information—including but not limited to technical information about your device, system and application software, and peripherals—that is gathered periodically to facilitate the provision of software updates, product support, and other services to you (if any) related to the Licensed Application. Licensor may use this information, as long as it is in a form that does not personally identify you, to improve its products or to provide services or technologies to you.

c. Termination. This Standard EULA is effective until terminated by you or Licensor. Your rights under this Standard EULA will terminate automatically if you fail to comply with any of its terms.

d. External Services. The Licensed Application may enable access to Licensor's and/or third-party services and websites (collectively and individually, "External Services"). You agree to use the External Services at your sole risk. Licensor is not responsible for examining or evaluating the content or accuracy of any third party External Services, and shall not be liable for any such third-party External Services. Data displayed by any Licensed Application or External Service, including but not limited to financial, medical and location information, is for general informational purposes only and is not guaranteed by Licensor or its agents. You will not use the External Services in any manner that is inconsistent with the terms of this Standard EULA or that infringes the intellectual property rights of Licensor or any third party. You agree not to use the External Services to harass, abuse, stalk, threaten or defame any person or entity, and that Licensor is not responsible for any such use. External Services may not be available in all languages or in your Home Country, and may not be appropriate or available for use in any particular location. To the extent you choose to use such External Services, you are solely responsible for compliance with any applicable laws. Licensor reserves the right to change, suspend, remove, disable or impose access restrictions or limits on any External Services at any time without notice or liability to you.

e. NO WARRANTY: YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE LICENSED APPLICATION IS AT YOUR SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LICENSED APPLICATION AND ANY SERVICES PERFORMED OR PROVIDED BY THE LICENSED APPLICATION ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND LICENSOR HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE LICENSED APPLICATION AND ANY SERVICES, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND OF NONINFRINGEMENT OF THIRD-PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR OR ITS AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE LICENSED APPLICATION OR SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION.

f. Limitation of Liability. TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL LICENSOR BE LIABLE FOR PERSONAL INJURY OR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS

INTERRUPTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OF OR INABILITY TO USE THE LICENSED APPLICATION, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, OR OTHERWISE) AND EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

g. You may not use or otherwise export or re-export the Licensed Application except as authorized by United States law and the laws of the jurisdiction in which the Licensed Application was obtained. In particular, but without limitation, the Licensed Application may not be exported or re-exported (a) into any U.S.-embargoed countries or (b) to anyone on the U.S. Treasury Department's Specially Designated Nationals List or the U.S. Department of Commerce Denied Persons List or Entity List. By using the Licensed Application, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use these products for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture, or production of nuclear, missile, or chemical or biological weapons.

h. The Licensed Application and related documentation are "Commercial Items", as that term is defined at 48 C.F.R. § 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. § 12.212 or 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. § 12.212 or 48 C.F.R. §§ 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

i. Except to the extent expressly provided in the following paragraph, this Agreement and the relationship between you and Proto shall be governed by the laws of the State of California, excluding its conflicts of law provisions. You and Proto agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Los Angeles, California, to resolve any dispute or claim arising from this Agreement.

#### **F. ADDITIONAL TERMS FOR CERTAIN CONTENT ACQUIRED FROM THIRD PARTIES**

Some Content available in certain Services are acquired by You from the third-party provider of such Content (as displayed on the product page and/or during the acquisition process for the relevant Content), not Proto. In such case, Proto acts as an agent for the Content provider in providing the Content to you, and therefore Proto is not a party to the Transaction between you and the Content provider. In that scenario, Content is licensed by the Content provider. The Content provider reserves the right to enforce the terms of use relating to such Content. The Content provider is solely responsible for such Content, any warranties to the extent that such warranties have not been disclaimed, and any claims that you or any other party may have relating to such Content.

#### **H. ADDITIONAL Proto FITNESS TERMS**

Proto Fitness is for entertainment and/or informational purposes only and is not intended to provide any medical advice. You should always seek the advice of an appropriately qualified healthcare professional regarding (a) the safety and advisability of any given activity, or (b) any specific medical condition or symptoms.

#### **I. CARRIER MEMBERSHIP**

Where available, you may be offered to purchase a Service membership from your wireless carrier (a "Carrier Membership"). If you purchase a Carrier Membership, your carrier is the merchant of record, which means that you acquire the Service license from your carrier, which will bill you for the cost of your Service membership, but the Service is provided by Proto. Your purchase relationship with the carrier is governed by the carrier's terms and conditions, not this Agreement, and any billing disputes related to a Carrier Membership



must be directed to your carrier, not Proto. By using a Service through a Carrier Membership, you agree that your carrier may exchange your carrier account information, telephone number and subscription information with Proto, and that Proto may use this information to determine the status of your Carrier Membership.

## **J. MISCELLANEOUS TERMS APPLICABLE TO ALL SERVICES**

### **DEFINITION OF Proto**

“Proto” means: Proto Inc., located at 7111 Hayvenhurst Ave, Van Nuys, CA 91406, for all users.

### **CONTRACT CHANGES**

Proto reserves the right at any time to modify this Agreement and to add new or additional terms or conditions on your use of the Services. Such modifications and additional terms and conditions will be effective immediately and incorporated into this Agreement. Your continued use of the Services will be deemed acceptance thereof.

### **THIRD-PARTY MATERIALS**

Proto is not responsible or liable for third party materials included within or linked from the Content or the Services.

### **INTELLECTUAL PROPERTY**

You agree that the Services, including but not limited to Content, graphics, user interface, audio clips, video clips, editorial content, and the scripts and software used to implement the Services, contain proprietary information and material that is owned by Proto and/or its licensors, and is protected by applicable intellectual property and other laws, including but not limited to copyright. You agree that you will not use such proprietary information or materials in any way whatsoever except for use of the Services for personal, noncommercial uses in compliance with this Agreement. No portion of the Services may be reproduced in any form or by any means, except as expressly permitted by this Agreement. You agree not to modify, rent, loan, sell, or distribute the Services or Content in any manner, and you shall not exploit the Services in any manner not expressly authorized.

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### **COPYRIGHT**

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### **TERMINATION AND SUSPENSION OF SERVICES**

If you fail, or Proto suspects that you have failed, to comply with any of the provisions of this Agreement, Proto may, without notice to you: (i) terminate this Agreement and/or your Proto ID, and you will remain liable for all amounts due under your Proto ID up to and including the date of termination; and/or (ii) terminate your license to the software; and/or (iii) preclude your access to the Services. Proto further reserves the right to modify, suspend, or discontinue the Services (or any part or Content thereof) at any time with or without notice to you, and Proto will not be liable to you or to any third party should it exercise such rights.

### **DISCLAIMER OF WARRANTIES; LIABILITY LIMITATION**

Proto DOES NOT GUARANTEE, REPRESENT, OR WARRANT THAT YOUR USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, AND YOU AGREE THAT FROM TIME TO TIME Proto MAY REMOVE THE SERVICES FOR INDEFINITE PERIODS OF TIME, CANCEL THE SERVICES AT ANY TIME, OR OTHERWISE LIMIT OR DISABLE YOUR ACCESS TO THE SERVICES WITHOUT NOTICE TO YOU. YOU EXPRESSLY AGREE THAT YOUR USE OF, OR INABILITY TO USE, OR ACTIVITY IN CONNECTION WITH THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES AND ALL CONTENT DELIVERED TO YOU THROUGH THE SERVICES ARE (EXCEPT AS EXPRESSLY STATED BY Proto) PROVIDED "AS IS" AND "AS AVAILABLE" FOR YOUR USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE ABOVE EXCLUSION OF IMPLIED WARRANTIES MAY NOT APPLY TO YOU. IN NO CASE SHALL Proto, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, OR LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING FROM YOUR USE OF ANY OF THE SERVICES OR FOR ANY OTHER CLAIM RELATED IN ANY WAY TO YOUR USE OF THE SERVICES AND/OR CONTENT, INCLUDING, BUT NOT LIMITED TO, ANY ERRORS OR OMISSIONS IN ANY CONTENT, OR ANY INJURY, LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SERVICES, EVEN IF ADVISED OF THEIR POSSIBILITY. BECAUSE SOME COUNTRIES, STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH COUNTRIES, STATES OR JURISDICTIONS, Proto'S LIABILITY SHALL BE LIMITED TO THE EXTENT SUCH LIMITATION IS PERMITTED BY LAW.

Proto SHALL USE REASONABLE EFFORTS TO PROTECT INFORMATION SUBMITTED BY YOU IN CONNECTION WITH THE SERVICES, BUT YOU AGREE THAT YOUR SUBMISSION OF SUCH INFORMATION IS AT YOUR SOLE RISK, AND YOU HEREBY RELEASE Proto FROM ANY AND ALL LIABILITY TO YOU FOR ANY LOSS OR LIABILITY RELATING TO SUCH INFORMATION IN ANY WAY. Proto DOES NOT REPRESENT OR GUARANTEE THAT THE SERVICES WILL BE FREE FROM LOSS, CORRUPTION, ATTACK, VIRUSES, INTERFERENCE, HACKING, OR OTHER SECURITY INTRUSION, AND YOU HEREBY RELEASE Proto FROM ANY LIABILITY RELATING THERETO. YOU SHALL BE RESPONSIBLE FOR BACKING UP YOUR OWN SYSTEM, INCLUDING ANY CONTENT ACQUIRED OR RENTED THROUGH THE SERVICES. Proto IS NOT RESPONSIBLE FOR DATA CHARGES YOU MAY INCUR IN CONNECTION WITH YOUR USE OF THE SERVICES.

#### WAIVER AND INDEMNITY

BY USING THE SERVICES, YOU AGREE, TO THE EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD Proto, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, AND LICENSORS HARMLESS WITH RESPECT TO ANY CLAIMS ARISING OUT OF YOUR BREACH OF THIS AGREEMENT, YOUR USE OF THE SERVICES, OR ANY ACTION TAKEN BY Proto AS PART OF ITS INVESTIGATION OF A SUSPECTED VIOLATION OF THIS AGREEMENT OR AS A RESULT OF ITS FINDING OR DECISION THAT A VIOLATION OF THIS AGREEMENT HAS OCCURRED. YOU AGREE THAT YOU SHALL NOT SUE OR RECOVER ANY DAMAGES FROM Proto, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, AND LICENSORS AS A RESULT OF ITS DECISION TO REMOVE OR REFUSE TO PROCESS ANY INFORMATION OR CONTENT, TO WARN YOU, TO SUSPEND OR TERMINATE YOUR ACCESS TO THE SERVICES, OR TO TAKE ANY OTHER ACTION DURING THE INVESTIGATION OF A SUSPECTED VIOLATION OR AS A RESULT OF Proto'S CONCLUSION THAT A VIOLATION OF THIS AGREEMENT HAS OCCURRED. THIS WAIVER AND INDEMNITY PROVISION APPLIES TO ALL VIOLATIONS DESCRIBED IN OR CONTEMPLATED BY THIS AGREEMENT.

#### STATUTORY EXCEPTIONS FOR PUBLIC INSTITUTIONS

If you are a qualified public educational or government institution and any part of this Agreement, such as, by way of example, all or part of the indemnification section, is invalid or unenforceable against you because of applicable local, national, state or federal law, then that portion shall be deemed invalid or unenforceable, as the case may be, and instead construed in a manner most consistent with applicable

governing law.

#### GOVERNING LAW

Governing law and venue for this Media Services Agreement is set forth in Proto's Terms and Conditions, Section 13.6 "Governing Law and Venue".

#### OTHER PROVISIONS

This Agreement constitutes the entire agreement between you and Proto and governs your use of the Services, superseding any prior agreements with respect to the same subject matter between you and Proto. You also may be subject to additional terms and conditions that may apply when you use affiliate services, third-party content, third-party software, or additional services. If any part of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. Proto's failure to enforce any right or provisions in this Agreement will not constitute a waiver of such or any other provision. Proto will not be responsible for failures to fulfill any obligations due to causes beyond its control. You agree to comply with all local, state, federal, and national laws, statutes, ordinances, and regulations that apply to your use of the Services. Your use of the Services may also be subject to other laws. Risk of loss for all electronically delivered Transactions pass to the acquirer upon electronic transmission to the recipient. No Proto employee or agent has the authority to vary this Agreement. Proto may notify you with respect to the Services by sending an email message to your email address or a letter via postal mail to your mailing address, or by a posting on the Services. Notices shall become effective immediately. Proto may also contact you by email or push notification to send you additional information about the Services. You hereby grant Proto the right to take steps Proto believes are reasonably necessary or appropriate to enforce and/or verify compliance with any part of this Agreement. You agree that Proto has the right, without liability to you, to disclose any data and/or information to law enforcement authorities, government officials, and/or a third party, as Proto believes is reasonably necessary or appropriate to enforce and/or verify compliance with any part of this Agreement (including but not limited to Proto's right to cooperate with any legal process relating to your use of the Services and/or Content, and/or a third-party claim that your use of the Services and/or Content is unlawful and/or infringes such third party's rights). Children under the age of majority should review this Agreement with their parent or guardian to ensure that the child and parent or legal guardian understand it.