Hedra - API Terms of Use

Last Updated Date: June 24, 2024

Hedra, Inc. ("**Hedra**") operates a social media and video content generation platform for users to create and export AI generated videos and video components (the "**Solution**"). This API Terms of Use (the "**Agreement**") constitutes the sole agreement between Hedra and the customer ("**Customer**") that accepts this Agreement by clicking on the "I Accept" button, or executes an Order (defined below), regarding Customer's use and access to the Solution through Hedra's application programming interface(s) ("**API**"). Hedra and Customer shall each be referred to as a "**Party**" and collectively referred to as the "**Parties**" for purposes of this Agreement.

By accepting this Agreement, either by clicking "I Accept" when accessing the API, or accessing or using the API, Customer agrees to be bound by this Agreement as of the date of such acceptance or the date of access to or use of the API. If Customer is entering into this Agreement on behalf of a company, organization or another legal entity (an "**Entity**"), Customer is agreeing to this Agreement for that Entity and representing to Hedra that Customer has the authority to bind such Entity to this Agreement, in which case the term "Customer" herein refers to such Entity. If Customer does not have such authority, or if Customer does not agree with this Agreement, Customer must not use or authorize any use of the API or the Solution.

Section 9.2, which incorporates by reference Section 14 of Hedra's Terms of Service , contains provisions that govern how to resolve disputes between Customer and Hedra. Among other things, Section 14 of Hedra's Terms of Service includes an agreement to arbitrate which requires, with limited exceptions, that all disputes between Customer and Hedra shall be resolved by binding and final arbitration. Section 14 of Hedra's Terms of Service also contains a class action and jury trial waiver. Please read Section 9.2 of this Agreement and Section 14 of Hedra's Terms of Service carefully.

1. ACCESS TO THE API.

1.1 <u>Access to the API.</u> Subject to the terms and conditions of this Agreement, Customer may access and use the API made available at https://www.hedra.com/profile ("**API Page**"), or as otherwise designated in an order placed by Customer (each, an "**Order**"). Customer's access is a non-exclusive, non-transferable, limited use of the API for Customer's personal or internal business use only. Customer is not authorized to integrate the Solution or the API into Customer's applications, products or services.

1.2 <u>Ownership.</u> Hedra retains all right, title and interest in and to the API, Solution and Documentation, including all intellectual property rights therein, and any improvements or enhancements thereto, and the foregoing are deemed Hedra's Confidential Information. Customer acknowledges that this Agreement is not a sale and does not transfer to Customer title or ownership of the API, Solution or Documentation, but only provides for limited use for purposes as contemplated herein. ALL RIGHTS NOT EXPRESSLY GRANTED HEREUNDER ARE RESERVED TO HEDRA.

1.3 <u>Restrictions.</u> Customer shall not, and shall not permit any third party to (a) modify or create any derivative works based on the API, Solution or any materials provided by Hedra relating to the API or Solution ("**Documentation**"), or any portion thereof; (b) reproduce the API, Solution or Documentation; (c) sublicense, distribute, sell, lend, rent, lease, transfer, or grant any rights in or to all or any portion of the API,

Solution or Documentation or provide access to the Solution to third parties on a service bureau basis or otherwise; (d) alter, modify, create derivative works of, reverse engineer, decompile, or disassemble the API, Solution or Documentation; (e) use the API or Solution to, or design or develop software to, upload or otherwise transmit any material containing software viruses, worms, Trojan horses or other computer code, files or programs designed to interrupt, destroy, or limit the functionality of any software or hardware; (f) refer to or otherwise use the API, Solution or Documentation as part of any effort to develop an application programming interface or program having any functional attributes, visual expressions or other features similar to those of the API or otherwise in connection with any products or services that are competitive to Hedra's products and services, including the API, Solution or Documentation; (g) circumvent any technological measures or content restrictions incorporated within the Solution or otherwise attempt to 'jailbreak' the Solution or its underlying AI Services; (h) use the API in excess of permitted rate limits imposed by Hedra from time to time, or otherwise circumvent or attempt to circumvent any rate limit technology deployed by Hedra; (i) use any automated software, devices or other processes to "scrape," extract, or download data from any of Hedra's software, systems or platform to circumvent any API rate limits or in any other manner that damages or otherwise adversely impacts Hedra's software, systems or databases or (j) use the API, Solution or Documentation other than as provided herein or in an Order. For the avoidance of doubt, a breach of any of the foregoing by Customer shall be considered a material breach of this Agreement.

2. CUSTOMER CONTENT; AI SERVICES.

2.1 <u>Customer Content.</u> "**Customer Content**" means any data, information, graphics, videos and/or other materials provided or submitted by Customer or its authorized users for use in connection with the Solution, including prompts, and other input to the Solution (collectively, "**Input**") and any new videos or video components generated through the Solution in response to Customer's Input (collectively, "**Output**"). Customer, and not Hedra, is entirely responsible for all Input Customer uploads, shares, posts, emails, transmits, queries, or otherwise makes available through or to the Solution. Customer acknowledges that Outputs are based on Inputs, and that Hedra has no control over any such Inputs. All Outputs are provided "as is" and with "all faults", and Hedra makes no representations or warranties of any kind or nature with respect to any Inputs or Outputs. Customer is solely responsible for its use of the Outputs created through the Solution, and for determining whether the Output is appropriate for its intended use. Customer assumes all risks associated with its use of any Outputs, including any potential copyright infringement claims from third parties or any disclosure of Outputs that personally identifies Customer or any third party.

2.2 <u>AI Services.</u> The Solution utilizes certain artificial intelligence and deep learning platforms, algorithms, tools and models ("**AI Services**") to generate Output. Customer acknowledges and agrees that Hedra may share Inputs with the AI Services for this purpose. Customer acknowledges that additional license requirements may apply to certain AI Services. Customer shall review and comply with such requirements for the AI Services used, and Customer shall assume all risks associated with Customer's use of such AI Services. Hedra will have no liability for the unavailability of any AI Services, or any third party's decision to discontinue, suspend or terminate any AI Services.

2.3 <u>Content Rights.</u> Customer represents and warrants that (a) it has all applicable rights to provide Customer Content to Hedra for the provision of the Solution and to grant to Hedra the rights specified herein, and (b) Customer Content will not violate any third-party intellectual property or proprietary rights or the privacy rights of any individual or Hedra's Acceptable Use Policy . Hedra does not claim ownership of

any Customer Content, provided that Customer agrees that Hedra is entitled to use Customer Content to provide and improve the Solution, including improving and training any algorithmic models underpinning the Solution, and to share the Customer Content with AI Services as necessary to provide the Solution.

2.4 <u>Content Restrictions.</u> Customer Content must conform, and Customer's use of the API and Solution must comply at all times, with Section 3.6 (Content Restrictions) of Hedra's Terms of Service and Hedra's Acceptable Use Policy .

3. FEEDBACK.

Hedra may periodically request that Customer provide, and Customer agrees to provide to Hedra, feedback regarding the use, operation, and functionality of the API and/or Solution ("**Feedback**"). Such Feedback shall include, without limitation, any information about operating results, known or suspected bugs, errors or compatibility problems, suggested modifications, and user-desired features. Customer acknowledges that Hedra may use such Feedback to improve its products and services, including the API and Solution without obligation to pay compensation.

4. TERM AND TERMINATION.

4.1 <u>Term.</u> This Agreement will commence as of the date it is accepted by Customer and will remain in full force and effect for so long as any Order remains in effect, unless earlier terminated in accordance with this Agreement (the "**Term**"). The term of an Order will begin on the effective date of the Order and continue in full force and effect for the duration set forth on such Order, unless earlier terminated in accordance with this Agreement. The Order will automatically renew unless either party provides written notice of non-renewal in accordance with the applicable Order.

4.2 <u>Termination for Cause.</u> Customer may terminate this Agreement, effective immediately upon written notice to Hedra, if Hedra breaches any provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from Customer. In the event Customer breaches any provision of this Agreement (including non-payment of any Fees), or if Hedra is required to do so by law (e.g., where the provision of the Solution is, or becomes, unlawful), Hedra has the right to, immediately and without notice, suspend or terminate any access to the Solution. Customer agrees that all terminations for cause are made in Hedra's sole discretion and that Hedra shall not be liable to Customer or any third party for any such termination.

4.3 <u>Termination for Convenience.</u> Hedra reserves the right to terminate this Agreement or Customer's access to the Solution at any time without cause upon written notice. In the event Hedra exercises this termination right, Hedra shall provide Customer with a pro-rated refund of any prepaid but unused Fees for the then-current Term (if any).

4.4 <u>Effects of Termination.</u> Upon expiration or termination of this Agreement for any reason: (i) the rights granted to Customer hereunder will immediately terminate; (ii) Customer shall immediately discontinue any use of the API or the Solution and shall return or destroy all Documentation under its control; (iii) each Party shall promptly return or destroy all Confidential Information and property of the other Party; and (iv) Sections 1.2, 1.3, 2, 3, 4.4, 5, 6, 7, 8, and 9 will survive.

5. CONFIDENTIALITY.

5.1 <u>Definition.</u> As used in this Agreement, "**Confidential Information**" means any and all information disclosed by either Party to the other which is designated as confidential, or which should otherwise be understood to be confidential, including but not limited to, financial information, product plans, business plans, trade secrets, technology, or any other proprietary information, whether transmitted orally, in writing, or by any other media. Confidential Information does not include information the receiving Party can demonstrate was: (a) publicly available through no fault of the receiving Party, or (b) obtained from third parties not under confidentiality restrictions.

5.2 <u>Non-Use and Non-Disclosure.</u> Each Party agrees: (a) to use Confidential Information of the other Party solely in accordance with the provisions of this Agreement; and (b) not to disclose, or permit to be disclosed, either directly or indirectly, Confidential Information of the other Party to any third party except as otherwise necessary to provide the Solution or exercise the rights granted herein. Each Party shall safeguard the Confidential Information of the other Party using the same measures it uses to protect its own Confidential Information, but in no event shall either Party use less than reasonable care in safeguarding the Confidential Information of the other Party. Either Party may disclose Confidential Information of the other Party which required to be disclosed by law or order of a court or other governmental entity; provided that such Party provides the other Party with prompt notice of such requirement, assists the other Party in seeking a protective order or other protection, and only discloses that portion of the Confidential Information that is required to be disclosed, and provided further that any information so disclosed retains its confidentiality protections for all other purposes.

5.3 <u>Use of Solution.</u> Customer is responsible for maintaining the secrecy of any passwords or codes that provide access to the Solution, and such access codes shall be deemed the Confidential Information of Hedra.

5.4 <u>Remedy.</u> If either Party breaches, or threatens to breach the provisions of this Section 5, each Party agrees that the non-breaching Party will have no adequate remedy at law and is therefore entitled to immediate injunctive and other equitable relief, without bond and without the necessity of showing actual money damages.

6. INDEMNIFICATION.

Customer shall indemnify and hold Hedra, its parents, subsidiaries, affiliates, officers, employees, agents, partners, suppliers, and licensors (each, a "**Hedra Party**" and collectively, the "**Hedra Parties**") harmless from any losses, costs, liabilities and expenses (including reasonable attorneys' fees) relating to or arising out of any and all of the following: (a) Customer Content, including any use of the Output by Customer; (b) Customer's use of, or inability to use, the Solution; (c) Customer's breach of this Agreement; (d) Customer's breach of any rights of another party; or (e) Customer's violation of any applicable laws, rules, or regulations. Hedra reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Customer, in which event Customer will fully cooperate with Hedra in asserting any available defenses.

7. WARRANTY DISCLAIMER, RESPONSIBILITY AND LIMITATION OF LIABILITY.

7.1 <u>WARRANTY DISCLAIMER.</u> THE API, SOLUTION, DOCUMENTATION AND ANY OUTPUT ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. Hedra MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE API, SOLUTION, DOCUMENTATION OR THE OUTPUT INCLUDING THEIR CONDITION, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, AND HEDRA SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. HEDRA DOES NOT REPRESENT OR WARRANT THAT THE CUSTOMER IS THE LEGAL OWNER OF THE OUTPUT, OR THAT THE INPUT OR OUTPUT ARE PROTECTABLE BY ANY INTELLECTUAL PROPERTY RIGHTS.

7.2 <u>RESPONSIBILITY FOR USE.</u> CUSTOMER, AND NOT HEDRA, SHALL BE SOLELY RESPONSIBLE FOR CUSTOMER'S USE OF THE API, SOLUTION, INCLUDING ANY USE OF THE CUSTOMER CONTENT AND DECISIONS MADE OR ACTIONS TAKEN BASED ON THE SOLUTION. CUSTOMER SHOULD EVALUATE THE ACCURACY OF ANY OUTPUT AND WHETHER IT IS SUITABLE OR APPROPRIATE FOR THE SPECIFIC USE CASE.

7.3 <u>LIMITATION OF LIABILITY.</u> EXCEPT FOR A BREACH OF SECTION 1.1 1.3, 2.2, 2.4 OR 5 AND A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 6, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, SPECIAL OR OTHER CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS OR USE OR LOSS OF DATA, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER IN AN ACTION IN CONTRACT, TORT, OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL HEDRA'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED ONE THOUSAND U.S. DOLLARS ($1000), WHETHER AN ACTION LIES IN CONTRACT, TORT, OR OTHERWISE. HEDRA IS NOT LIABLE, AND CUSTOMER AGREES NOT TO SEEK TO HOLD HEDRA LIABLE, FOR THE AI SERVICES OR ANY OUTPUT THEREOF, AND CUSTOMER AGREES THAT THE RISKS ASSOCIATED WITH AI SERVICES RESTS ENTIRELY WITH CUSTOMER. THE PARTIES AGREE THAT THE FOREGOING LIMITATIONS REPRESENT A REASONABLE ALLOCATION OF RISK UNDER THIS AGREEMENT. **THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN.**

8. FEES.

8.1 <u>Third-Party Service Provider.</u> Hedra uses Stripe, Inc. and its affiliates as its third-party service provider for payment services (e.g., card acceptance, merchant settlement, and related services) ("**Third-Party Service Provider**"). If Customer makes a purchase on the Solution, Customer will be required to provide its payment details and any additional information required to complete the order directly to the Third-Party Service Provider. Customer agrees to be bound by Stripe's Privacy Policy (currently accessible at https://stripe.com/us/privacy) and its Terms of Service (currently accessible at https://stripe.com/ssa) and hereby consents and authorizes Hedra and Stripe to share any information and payment instructions Customer provides with one or more Third-Party Service Provider(s) to the minimum extent required to complete the transactions. Please note that online payment transactions may be subject to validation checks by the Third-Party Service Provider and Customer's card issuer, and Hedra is not responsible if

Customer's card issuer declines to authorize payment for any reason. For Customer's protection, the Third-Party Service Provider uses various fraud prevention protocols and industry standard verification systems to reduce fraud and Customer authorize it to verify and authenticate Customer's payment information. Customer's card issuer may charge Customer an online handling fee or processing fee. Hedra are not responsible for this. In some jurisdictions, the Third-Party Service Provider may use third parties under strict confidentiality and data protection requirements for the purposes of payment processing services.

8.2 <u>Fees and Expenses.</u> If Hedra does not currently charge for access to the Solution, Hedra reserves the right to charge fees for access to certain or all features of the Solution at any time. Customer shall pay all fees or charges ("**Fees**") in accordance with the fees, charges and billing terms in effect at the time a Fee is due and payable, as located on the API Page (https://www.hedra.com/profile), or as otherwise stated in an Order. Any price changes will be effective immediately for all price decreases or changes made for legal reasons. All other price changes will be effective 14 days after they are posted. Except as may otherwise be provided herein, each Party shall bear its own expenses in connection with the performance of this Agreement.

8.3 <u>Payment.</u> By providing Hedra and/or the Third-Party Service Provider with Customer's payment information, Customer agrees that Hedra and/or the Third-Party Service Provider is authorized to immediately invoice Customer for all Fees due and payable to Hedra hereunder and that no additional notice or consent is required. Customer shall immediately notify Hedra of any change in Customer's payment information to maintain its completeness and accuracy. Hedra reserves the right at any time to change its prices and billing methods in its sole discretion. Customer agrees to have sufficient funds or credit available upon placement of any order to ensure that the purchase price is collectible by Hedra. Customer's failure to provide accurate payment information to Hedra and/or the Third-Party Service Provider or Hedra's inability to collect payment constitutes a material breach of this Agreement. Except as set forth in this Agreement, all Fees for the Service are non-refundable.

9. GENERAL PROVISIONS

9.1 <u>Assignment.</u> Neither Party may assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of the other Party; provided, however, that either Party may assign its rights or delegate its obligations, in whole or in part, without such consent, to an entity that acquires all or substantially all of the business or assets of such Party to which this Agreement pertains, whether by merger, reorganization, acquisition, sale, or otherwise. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

9.2 <u>Governing Law.</u> This Agreement and all matters arising out of or relating to this Agreement shall be governed by the laws of the State of New York, excluding its conflict of law provisions. Subject to Section 14 of Hedra's Terms of Service, both Parties consent to the exclusive jurisdiction and venue of the state and federal courts located in New York, New York.

9.3 <u>Notices.</u> All notices required to be sent hereunder shall be in writing and shall be deemed to have been given upon (a) the date it was delivered by courier, or (b) if by certified mail return receipt requested, on the date received, to the addresses set forth in an Order and to the attention of the signatory of this Agreement or to such other address or individual as the Parties may specify from time to time by written notice to the other Party.

9.4 <u>Severability; Waiver.</u> If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect. The waiver by either Party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

9.5 <u>Force Majeure.</u> Neither Party shall be liable for any delay or failure in performance due to acts of God, earthquakes, shortages of supplies, transportation difficulties, labor disputes, riots, war, fire, epidemics/pandemics, and similar occurrences beyond its control, whether or not foreseeable. Performance times under this Agreement shall be extended for a period of time equivalent to the time lost because of a delay which is excusable under this provision.

9.6 <u>Agreement Updates.</u> When changes are made, Hedra will make a new copy of this API Terms of Use available on the Solution, and Hedra will also update the "Last Updated" date at the top of this Agreement. If Hedra makes any material changes, Hedra will send an email with an updated copy of this Agreement to Customer at the Customer's email address associated with its account. Unless otherwise stated in such update, any changes to this Agreement will be effective immediately for users without an account and thirty (30) days after posting for users with an account. Hedra may require Customer to provide consent to the updated Agreement in a specified manner before further use of the API or Solution is permitted. IF CUSTOMER DOES NOT AGREE TO ANY CHANGE(S) AFTER RECEIVING A NOTICE OF SUCH CHANGE(S), CUSTOMER SHALL STOP USING THE SOLUTION.

9.7 <u>Entire Agreement.</u> This Agreement together with any attachments constitutes the complete agreement between the Parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter herein. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each Party. No other act, document, usage or custom shall be deemed to amend or modify this Agreement.