



# SOUNDLY

This Enterprise Services Agreement is entered into by and between the Soundly entity set out in the Order Form (“**Soundly**”) and the organization agreeing to the terms of this Agreement (“**Customer**”), hereinafter referred to individually as a “**Party**” or jointly as the “**Parties**”. This Agreement shall be effective as of the Effective Date of the first Order Form, referencing or otherwise incorporating this Agreement, between Customer and Soundly.

## 1. DEFINITIONS

In addition to the terms defined in the Order Form, the following terms have the meanings as set out below.

“**Affiliate**” means a legal entity that controls, is controlled by, or is under common control with a party, where “control” is defined as owning more than 50% of the voting shares of such entity.

“**Agreement**” means this Enterprise Services Agreement together with any Order Form and any exhibit.

“**Licensed Works**” means the sound effects (“**SFX**”), available through the Soundly Platform from time to time.

“**Soundly Platform**” means the Soundly software available for download on getsoundly.com.

“**Term**” means the Initial Period together with any Renewal Periods and/or Trial Periods as applicable.

## 2. GRANT OF RIGHTS

2.1. Subject to the terms and conditions of this Agreement, Soundly hereby grants to the Customer the right and license to:

- (a) for the Term and in the Synchronization Territory, access the Soundly Platform and to reproduce and make copies of the Licensed Works for the purposes of synchronizing, including and incorporating them, in whole or in part, in timed relation with any Customer Productions; and
- (b) for the Term and in perpetuity, in the Distribution Territory on the Permitted Media, make available, communicate to the public, distribute, broadcast, transmit, exhibit, publicly perform, reproduce and make copies of any Customer Productions containing any Licensed Work, provided that the Customer Production is completed during the Term.

2.2. The rights granted to Customer under Section 2.1 include the right to:

- (a) vary, alter, modify, add to and/or delete parts of the Licensed Works, and to use only a portion or portions of the Licensed Works in the Customer Productions,
- (b) sub-license the rights granted to the Customer under Section 2.1(b) above to any third party (provided for the sake of clarity that the Customer Production is completed during the Term).

2.3. With the exceptions expressly stated in the Order Form (if any), the Customer may not use any Licensed Work in:

- (a) vignettes/theme songs or corporate identification material meaning sound-logos;
- (b) physical products (e.g. in speakers); or
- (c) non-fungible tokens (“NFTs”) or substantially equivalent technologies.

2.4. The Customer may not use the Licensed Works in connection with any material or otherwise in a manner or context that is defamatory, illegal or inciteful of an illegal act; racist; derogatory or discriminating against any person based on for example race, nationality, religion, ethnic identity, gender, gender identity or sexual orientation; that constitutes encouragement of violence or use of weapons; or that is pornographic. The Customer Productions shall comply with any applicable laws and regulations. Moreover, the Customer may not use the Licensed Works in connection with political content, such as the promotion, advertisement or endorsement of any party, candidate or elected official; and “adult videos” and promotion of adult entertainment venues, escort services, or the like.

2.5. The Customer may not make available, use or in any other way exploit the Licensed Works:

- (a) for the purpose of making the Licensed Work(s) (in whole or in part) available on a stand-alone basis, hence without being synchronized with a Customer Production in accordance with the purposes of this Agreement;
- (b) in a way that allows third parties to download and/or otherwise access or use the Licensed Works on a stand-alone basis (e.g. in digital templates or other applications enabling end users to synchronize or otherwise combine the Licensed Works with other content) or in any way that enables users to create or order on-demand products (e.g., in electronic greeting cards or ringtones);
- (c) in any way that involves (i) performing on the Licensed Works any form of text and/or data mining (TDM); or (ii) the development of any software program, including, but not limited to, training a machine learning or artificial intelligence (AI) system or in connection with any other application of machine learning analysis or similar technologies; or
- (d) in any way to (i) repackage the Licensed Works or upload/use them (in whole or in part) as audio samples, sound libraries, sound effects, or music beds for any purpose; or (ii) distribute or otherwise exploit the Licensed Works as the Customer's property.

2.6. The Customer may only use the Licensed Works under and subject to the rights granted under this Agreement. All rights not expressly granted hereunder are reserved by Soundly. All rights and licenses granted hereunder are non-exclusive, non-transferable and non-assignable and may not be sub-licensed or assigned other than as expressly permitted under this Agreement.

2.7. This Agreement covers use by up to the number of users (Seats and Flex Seats (if any)) as set out in the Order Form, each having one account to the Soundly Platform. If more than one person is using the same Seat, Soundly reserves the right to either (i) immediately terminate this Agreement, without refunding any prepaid fees, or (ii) with retroactive effect assess additional fees to Customer calculated in each instance on the then-current per-user pricing applicable to this license for each additional user.

2.8. **Text to Speech.** Customer may use the text-to-speech features of the Soundly Platform to generate speech ("**Generated Speech**") for inclusion in Customer Productions. As between Soundly and the Customer, the Customer retains any intellectual property rights in and to any input submitted by the Customer ("**User Input**"). By submitting User Input, the Customer grants to Soundly a worldwide, non-exclusive, royalty-free, fully paid up, and unrestricted right and license to use the User Input in connection with providing Generated Speech to the Customer, and the Customer acknowledges and agrees that the User Input may be shared with third-party service providers to create the Generated Speech.

2.9. **Private Sounds.** Customer may upload its own or third-party sounds to a separate storage space within the Soundly Platform ("**Private Sounds**"). Customer warrants that it has all necessary rights to upload and use such Private Sounds and that its use does not infringe any third-party rights.

### 3. LICENSE FEE

3.1. In consideration for the rights granted hereunder the Customer shall during the Term pay to Soundly the License Fee.

3.2. The License Fee will be invoiced by Soundly in advance for such payment interval set forth in the Order Form and shall be payable by the Customer against invoice within the payment term set forth in the Order Form, calculated from the date the invoice was issued.

3.3. Should the Customer be in delay with any payment under the Agreement, Soundly is entitled to default interest on any overdue amount at an annual rate of eight percentage points (8%) above the main refinancing operations rate of the European Central Bank. If payment is delayed more than thirty (30) days after written reminder of the payment from Soundly, Soundly is further entitled to, in its sole discretion, suspend the Customer's access to the Soundly Platform, until payment is duly made by the Customer.

3.4. **Purchase Orders.** If Customer requires the use of a purchase order, Customer is responsible for providing the applicable purchase order at the time of purchase. The Parties acknowledge and agree that any terms and conditions included in any purchase order, vendor portal or any similar Customer specific invoicing process are void and will not apply between the parties or to Customer's purchase of the Enterprise Services regardless of any failure of Soundly to object to such terms, provisions, or conditions.

3.5. All fees and other amounts stated or referred to in this Agreement are exclusive of all taxes, duties, levies, tariffs, and other governmental charges, including without limitation any such taxes that are required to be withheld,

but excluding any taxes based on Soundly's net income (collectively, "Taxes"). Customer will be responsible for payment of all Taxes and any related interest and/or penalties resulting from any payments made hereunder. Any applicable Taxes will be determined based on the laws and regulations of the taxing authority(ies) governing the Customer address provided by Customer. The appropriate Tax amount shall be invoiced to and paid by the Customer in addition to the fees unless the Customer provides Soundly with a valid tax exemption certificate or other acceptable proof evidencing exemption from or reduction of liability to Taxes authorized by the appropriate taxing authority.

#### **4. TERM AND TERMINATION**

- 4.1. This Agreement shall, in accordance with what is set out in the Order Form, enter into force on the Effective Date and remain in force for the Initial Period. Unless otherwise set forth in the Order Form, if neither party terminates this Agreement with three (3) months' written notice prior to the end of the Initial Period, this Agreement shall be automatically prolonged for consecutive Renewal Period(s) until terminated by either Party with three (3) months' written notice prior to the end of a Renewal Period. If a Trial Period is set out in the Order Form, this Agreement shall enter into force on the Effective Date and remain in force for the Trial Period and if neither Party has notified the other Party that this Agreement shall be terminated at the end of the Trial Period, this Agreement shall be prolonged for the Initial Period and any Renewal Period(s) in accordance with the above. Any notice of termination shall be made in writing.
- 4.2. Either Party may terminate this Agreement with immediate effect by written notice to the other Party if:
- (a) the other Party has committed a material breach of any of the terms and conditions of this Agreement and has failed to remedy such breach within twenty (20) days of written notice thereof; or
  - (b) bankruptcy, insolvency or composition proceedings are instituted against the other Party, if there is otherwise reason to assume that the other Party has or may become insolvent or if the other Party is subject to trade prohibition.

#### **5. CONSEQUENCES OF TERMINATION**

- 5.1. After the date of termination of this Agreement, the Customer is no longer entitled to use and access the Soundly Platform and shall return to Soundly or delete any and all copies of the Licensed Works.
- 5.2. After the termination of this Agreement, the rights granted to the Customer under Section 2.1(b) shall continue to apply in accordance with the terms of that provision in respect of such Customer Productions that are completed before the effective date of termination of this Agreement, subject to the applicable License Fee having been paid in full by the Customer.

#### **6. TRADEMARKS, OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS**

- 6.1. Neither Party is granted any right or interest in or to the trademarks, brands or trade names of the other Party and neither Party may use the other Party's trademarks, brands or trade names without the prior written consent of the other Party, except as explicitly provided for in 10.2.1.
- 6.2. Notwithstanding anything herein to the contrary, the Customer hereby acknowledges that it does not acquire any rights of ownership, or otherwise any exclusive rights, in relation to any Licensed Works. The Licensed Works are the sole property of Soundly or its licensors.
- 6.3. Soundly does not acquire any rights of ownership in relation to the Customer Productions, which are the sole property of the Customer, and the Customer is entitled to assign or sub-license all rights to broadcast and otherwise exploit the Customer Productions to any third party, provided that any and all use of a Customer Production embodying a Licensed Work is subject to the rights and restrictions herein.

#### **7. REPRESENTATIONS AND WARRANTIES**

- 7.1. Each Party represents and warrants that it has full power and authority to enter into the Agreement and that upon execution and delivery hereof, this Agreement will constitute the valid and binding obligations of that Party.
- 7.2. Soundly represents and warrants that it controls and has and will maintain all rights and authorizations that are required in order for it to enter into this Agreement and to grant the rights and licenses herein and to fully perform its obligations hereunder.

## 8. INDEMNIFICATION

- 8.1. Soundly will indemnify the Customer from any damage, liability or expense (including reasonable attorneys' fees and expenses) arising or resulting from any third-party claim based on (i) the Soundly Platform or the Licensed Works as provided by Soundly and when used by Customer as permitted under this Agreement, infringing any third party's intellectual property rights; or (ii) its breach of Section 10.9.1 (each such claim a "Claim"). Such indemnification does not apply to the extent any damage, liability or expense arise out of modifications made to the Licensed Work(s) by the Customer, or use of the Licensed Works or the Soundly Platform in breach of this Agreement, had such damage, liability or expense not arisen but for such modification or such breach.
- 8.2. The Customer will indemnify Soundly from any damage, liability or expense (including reasonable attorneys' fees and expenses) arising or resulting from any third-party claim based on (i) any User Input or Private Sounds as provided by Customer infringing any third party's intellectual property rights; or (ii) its breach of Section 10.9.1 (each such claim a "Claim").
- 8.3. The indemnification obligations set forth in this Agreement will apply only if the indemnified party (a) notifies the indemnifying party in writing of a Claim promptly upon the earlier of learning of or receiving a notice of it; (b) provides the indemnifying party the option to assume sole control over the handling, settlement or defense of any Claim; (c) refrains from making admissions about a Claim without the indemnifying party's prior written consent; and (d) takes reasonable measures to mitigate any damages relating to the Claim.
- 8.4. If the indemnifying party assumes control of the defense, the indemnified party shall provide reasonable assistance as requested by the indemnifying party, at the indemnifying party's expense, and the indemnified party shall have the right to participate in such litigation, at its expense, through counsel selected by the indemnified party. The indemnifying party will not be liable for legal fees and other costs incurred prior to the indemnified party giving notice of the claim for which indemnity is sought. Neither Party may settle any Claim without the other Party's approval (which approval will not be unreasonably withheld, conditioned, or delayed) unless it unconditionally releases the other Party of all liability. The indemnifying party will not be liable to make any payment to the indemnified party for any damages, liability, or expense pursuant to this Section 8 until there is a final, non-appealable judgment or a final settlement agreed upon by the indemnifying party.
- 8.5. If any Licensed Work becomes the subject of an infringement claim, Soundly will, without undue delay and at Soundly's expense, (a) secure the right for the Customer to continue using the Licensed Work or (b) replace or modify the Licensed Work to make it non-infringing. If Soundly reasonably determines that neither (a) nor (b) is commercially feasible to achieve, or if further use of the Licensed Work by Customer is enjoined by the order of a court of competent jurisdiction, Soundly may require Customer to stop using the Licensed Work, provided that it compensates the Customer for its reasonable and actual third party costs in substituting the Licensed Work for another SFX.

## 9. LIMITATIONS OF LIABILITY

- 9.1. **To the extent permitted by applicable law, and except with respect to death or personal injury caused by negligence, damage occasioned by fraud, willful misconduct, deliberate default or gross negligence of a Party, or any breach of Section 10.2 (Confidentiality), neither Party shall be liable to the other for (i) any special, indirect, incidental, consequential or exemplary damage, including, but not limited to, lost profits, (ii) or any amount exceeding the annual License Fee.**
- 9.2. **Notwithstanding the above, for any amounts payable to third parties pursuant to each Party's indemnification obligations under Section 8, each Party's liability shall be limited to two times (2x) the annual License Fee.**

## 10. MISCELLANEOUS

### 10.1. Order of Preference.

In the event of a conflict between the Enterprise Services Agreement and Order Form, the order of preference will be the Order Form, then the Enterprise Services Agreement.

### 10.2. Confidentiality

- 10.2.1. Each Party undertakes, during the Term and for a period of five (5) years thereafter, to keep Confidential Information strictly confidential and to not disclose any Confidential Information to any third party, except to those of its affiliates, officers, employees and contractors to whom such access is necessary for the performance of this Agreement; provided that each such recipient is bound to confidentiality restrictions at least as restrictive those of this Section 10.2 before any such disclosure. For the purposes of this Agreement, "**Confidential Information**" means the terms and conditions (but not the existence) of this Agreement, and any and all information of whatever nature that may be considered a business or trade secret of any of the Parties relating

to a Party, its business, technology, partners, affiliates, customers and/or suppliers or any other information, irrespective of whether such information has been marked confidential or not or whether the information was disclosed orally or in writing, in electronic or in any other form or in any other way, and which is obtained from the other Party in connection with this Agreement.

10.2.2. Irrespective of the above, the Parties' confidentiality undertaking under this Section 10.2 shall not apply to information which (i) is in the public domain through no fault of the receiver, (ii) was known to the receiver without restriction before receipt from the discloser as evidenced by written documentation, (iii) is independently developed by the receiver without reference to the Confidential Information, as evidenced by written documentation, (iv) is lawfully received by the receiver from a third party without a duty of confidentiality or (v) the receiver is required to disclose under law or pursuant to any order of court or other competent authority or tribunal. If a Party is required, in circumstances contemplated by (v), to disclose any Confidential Information, the disclosing Party shall consult with the other Party prior to any such disclosure. Further, Soundly has the right to promote the fact that the Customer is a customer of Soundly and to use Customer's company/brand name and logo for marketing or promotional purposes.

### **10.3. Disclaimers**

Except for the express warranties set forth in Section 7, the Soundly Platform and Licensed Works are provided "as is". Soundly disclaims all other warranties, express or implied including but not limited to (a) implied warranties of merchantability, fitness for a particular purpose (b) warranties as to the quality or performance of the materials, information, goods, services, technology and/or content provided under or in connection with this Agreement, including but not limited to any limitations on user access to or use of content; and (c) warranties as to the performance of computers, technology or networks.

### **10.4. Assignment**

Neither Party may wholly or partially assign or pledge any of its rights and/or obligations under this Agreement without the other Party's prior written consent. Notwithstanding the above, Soundly may transfer this Agreement in connection with a merger, internal restructuring and/or sale of all or substantially all of its assets. For the avoidance of doubt, any assignment, transfer, sub-license or secondary exploitation of the Customer Productions embodying Licensed Works in accordance with Section 6.3 of this Agreement is permitted.

### **10.5. Survival**

The provisions of this Agreement that by their nature should survive termination of this Agreement including sections on ownership of the Licensed Works, Confidentiality, dispute resolution and choice of law, limitations of liability and indemnification, will survive.

### **10.6. No Waiver**

The failure of either Party hereto to insist upon the strict adherence to any terms of this Agreement on any occasion shall not be considered as a waiver of any right hereunder nor shall it deprive that Party of the right to insist upon the strict adherence to that term or any other term of this Agreement.

### **10.7. Severability**

If any provision of this Agreement is for any reason deemed invalid, unlawful, void, or unenforceable, then that provision will be deemed severable from this Agreement, and the invalidity of the provision will not affect the validity or enforceability of the remainder of this Agreement. The Parties shall replace such provision by one or more valid and enforceable provisions approximating the original intention of the Parties as closely as possible.

### **10.8. Complete Agreement and Amendments**

This Agreement reflects the Parties' complete agreement regarding the subject matter hereof and cannot be altered or waived except by a writing signed by both Parties.

### **10.9. Compliance and Business Ethics**

#### **10.9.1. Export Controls and Sanctions**

The Parties agree to comply with any and all trade, economic or financial sanctions and export control laws, regulations or similar restrictive measures of any country with jurisdiction over such Party's activities ("**Sanctions**"). Each Party warrants that neither it nor its affiliates, nor their respective directors and officers, is a person or entity on any list related to sanction laws or regulations issued or made public by the UN, EU, or U.S.

(a “**Sanctioned Party**”), nor directly or indirectly owned 50% or more or otherwise controlled by a Sanctioned Party. In performing its obligations and exercising its rights under the Agreement, each Party warrants that it will not, directly or indirectly, engage in any unauthorized business or dealings with any Sanctioned Party or otherwise engage in any activities prohibited by Sanctions. Customer acknowledges that software related to or made available by the services offered hereunder may be subject to export controls and, except as required and authorized by law, agrees and warrants that it will not itself, nor will it allow or provide for any person or entity to in any way access, use, export, re-export or transfer the software related to or made available by the services offered hereunder in/to a Sanctioned Party, any comprehensively sanctioned or embargoed country or region, or otherwise in violation of Sanctions.

*10.9.2. Anti-Bribery and Corruption*

The Parties shall comply with applicable laws and regulations relating to anti-bribery and corruption. Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other Party in connection with this Agreement.

**10.10. Applicable Law and Dispute Resolution**

This Agreement and any dispute, controversy, or claim, including non-contractual disputes or claims, arising out of or in connection with it or its subject matter or formation, or the breach, termination or validity thereof (each a “**Dispute**”) shall be governed by and construed in accordance with the laws of Norway with the Oslo City Court as agreed venue. Further, the Customer agrees that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement or to any sale of goods carried out as a result of Customer’s use of the services offered hereunder.