

This Animation Production Services Agreement (referred to herein as the "Agreement") constitutes a legally binding agreement by and between Promoshin.com, a corporation, with a principal place of business at 22020 Clarendon St, Ste 110, Woodland Hills, CA , and yourself ("Customer"). This Agreement is effective as of the first date you receive or have received Production Services (the "Effective Date"). Promoshin and Customer may be referred throughout the Agreement individually as "Party" or together as "Parties". **YOUR USE OF THE PRODUCTION SERVICES CONSTITUTES ASSENT TO THE TERMS OF THIS AGREEMENT.** In consideration of the promises and mutual covenants herein, the Parties agree as follows:

## **1. ANIMATION PRODUCTION SERVICES.**

1. Description of Services. Pursuant to the terms of this Agreement, Promoshin shall provide animated explainer video production services as they are described on Promoshin's then-current publicly accessible website (the "Production Services"). Customer has several options and add-on services to consider when retaining Promoshin for Production Services, including, by way of example and not as an exclusive nor binding list, the duration of the video, the style, and the speed of production. Absent mutual agreement to the contrary and subject to the payment of all fees due, the Parties will be bound by the elections made regarding the foregoing at the time of Customer's commissioning of the Production Services.
2. Standard of Services. Promoshin shall perform the Production Services in a professional manner and shall use commercially reasonable efforts to meet any mutually agreed upon descriptions, specifications, and time schedule for the completion of such Production Services.
3. Deliverables. The Production Services may include the creation and delivery of materials, products, and reports to be delivered to Customer per the terms herein (collectively, the "Deliverables"). Such Deliverables may include, by way of example and not as an exclusive nor binding list, finished animated explainer videos, excerpts and pieces thereof, and written content.
4. Other Terms. Customer may be provided with other terms from time to time. Such terms (the "Incorporated Terms") are hereby incorporated into this Agreement by reference. Should there be any conflict between the Incorporated Terms and the terms of the main body of this Agreement, the terms of the main body shall control.
5. Script, Storyboard, and Illustration Delivery. If Promoshin has not heard from Customer within ten (10) days after delivery of a script, storyboard, or illustration, Customer's project shall go on hold. Promoshin shall have no obligations with respect to this Agreement or the Production Services while Customer's project is on hold. Customer's project shall cease to be on hold upon Promoshin receiving relevant, material correspondence with respect to the script, storyboard, or illustration at hand.
6. Video Revision Acceptance. The Production Services (and maintenance) process includes mechanisms for which Customer may request revisions to their animated explainer video. Any such revision shall be deemed accepted and final unless Customer requests an additional revision thereof within ten (10) days of its receipt. Prior to an animated explainer video being completed and the final invoice therefor being issued ("Video Completion"), such revisions shall be provided at no additional charge. After Video Completion, additional revisions shall incur an additional fee or require that Customer purchase a maintenance plan.
7. Deadlines. The Parties acknowledge and agree that all deadlines agreed upon in relation to the provision of the Production Services are anticipatory in nature and may change for any reason or no reason, including but not limited to due to Customer's requests for additional revisions, and Customer's response-time to requests and responsibilities. Promoshin may, at its sole discretion, change any such deadlines.
8. Satisfaction Guarantee with Unlimited Revisions. Promoshin offers the following satisfaction guarantee: If, prior to any revision of a video being accepted per Section 1.5 above, Customer is dissatisfied with said video, Promoshin will revise said video at Customer's request and direction at no additional charge. While there is no limit to the number of revisions that Customer may request,

the revision of a video that has already been (deemed) accepted shall accrue additional revision fees that Promoshin and Customer will mutually agree upon prior to Promoshin starting the additional edits.

9. Revision Conditions. Only revisions of the then most-recent version of any work product shall be offered at no additional charge. Any revision of any work product that is not the then most-recent version, whether it be a script, storyboard, illustration, or video, or that is in a previous Phase of production (as defined below) shall accrue additional production fees that Promoshin and Customer will mutually agree upon prior to Promoshin starting the additional edits. "Phase" means each of the following: scripting, storyboarding, illustrating, and animation.

## **2. WARRANTY, DISCLAIMER AND LIMITATION OF LIABILITY.**

1. Warranty Disclaimer. Other than any express warranties provided per the terms of this Agreement, the Production Services and Deliverables are provided to Customer without warranty of any kind, whether express or implied. PROMOSHIN SPECIFICALLY EXCLUDES AND DISCLAIMS THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.
2. Damages Limitation. IN NO EVENT SHALL PROMOSHIN BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES HOWEVER CAUSED AND WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY OR ANY OTHER THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST REVENUES, LOST SAVINGS, COSTS OF CAPITAL, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, DOWNTIME COSTS, LOSS OR IMPAIRMENT OF DATA AND OTHER BUSINESS LOSS. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER PROMOSHIN KNOWS OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED HEREIN.
3. Limitation of Liability. IN NO EVENT SHALL THE TOTAL LIABILITY OF PROMOSHIN ON WHATEVER BASIS, EXCEED THE TOTAL COMPENSATION ACTUALLY PAID BY CUSTOMER TO PROMOSHIN FOR THE PRODUCTION SERVICES.
4. Risk Allocation. The provisions herein allocate risks of loss or failure between Customer and Promoshin. The compensation provisions contained in this Agreement reflect this allocation of risk and the disclaimer and limitations of liability contained herein.

## **3. PAYMENT TERMS AND TAXES.**

1. Compensation. In consideration for the Production Services provided by pursuant to this Agreement, Customer shall pay Promoshin the fees as mutually agreed. Any such fees shall accrue upon Customer's commissioning of the Production Services. Remaining balances due on any fees accrued shall be due upon Customer's acceptance of the final animated explainer video per the terms herein.
2. Additional Payment Terms. Customer agrees to pay a late payment service charge of the lesser of: a.) one (1.5%) per month of the unpaid amount of any fees or charges which have become due hereunder and remain unpaid for more than 30 days; and b.) the maximum amount allowed by law.
3. Taxes. Customer shall pay any applicable local, state, federal or governmental excise, sales, value-added, export, import, use, royalty, license, privilege, gross receipts and similar taxes levied or imposed upon the fees, charges or Production Services described in this Agreement. Upon demand Customer shall pay to Promoshin an amount equal to any such taxes withheld from, actually paid by, or required to be collected or paid by Promoshin.
4. Deposits. Any deposits made by Customer, including but not limited to Customer's initial deposit, shall be non-refundable.

#### 4. OWNERSHIP PROVISIONS.

1. Promoshin IP. All of Promoshin's Confidential Information (defined in Section 5.2 below) and intellectual and proprietary property, including but not limited to, project files, digital characters and their likenesses, digital props, sounds, illustrations, graphics, and other media, even if used or disclosed by Promoshin in the production of Deliverables, or otherwise made a part of such Deliverables, shall be and remain the property of Promoshin ("Promoshin IP"). Customer hereby assigns any and all right and title it may acquire in the Promoshin IP to Promoshin and agrees to execute any documentation that may be necessary to effectuate the foregoing. Promoshin hereby reserves all rights in such property not explicitly granted.
2. Deliverables. Subject to the payment of all fees due hereunder, Customer shall own all completed and fully accepted Deliverables. For the avoidance of doubt, the ownership of all intermediary materials shall remain with Promoshin. Customer hereby grants to Promoshin a fully-paid, worldwide, irrevocable, sublicensable, and transferable license to use, distribute, publicly perform, and publicly display the Deliverables for Promoshin's own marketing and promotion purposes.
3. Customer Data. To the extent that Customer has provided Promoshin with Customer Data for the purpose of the Production Services, Customer warrants that it possesses all ownership rights and/or license grants necessary to provide such Customer Data to Promoshin for the purpose of the Production Services. **Customer shall indemnify Promoshin and its Affiliates against any action or claim that Customer's use of the Customer Data infringes the intellectual property rights of any third-party.** Customer further warrants that the Customer Data shall be of reasonable quality, and free from material defects. "Affiliate" means, with respect to any entity, any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such entity, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through ownership of voting securities, by contract, or otherwise. "Customer Data" means data or other media owned or otherwise furnished by Customer, whether created in-house or sourced from one or more third-parties, including but not limited to graphics, music, sounds, voiceovers, and written materials.

#### 5. CONFIDENTIAL INFORMATION.

1. Protection of Confidential Information. Each Party acknowledges that Confidential Information may be disclosed to the other Party during the course of this Agreement. Each Party agrees that it will take reasonable steps, at least substantially equivalent to the steps it takes to protect its own proprietary information to prevent the duplication or disclosure of Confidential Information of the other Party, other than in the manner and to the extent expressly permitted by this Agreement. Each Party agrees to notify the other Party promptly in the event of any breach of its security under conditions in which it would appear that Confidential Information of the other Party was compromised or is exposed to loss. Each Party shall, upon request from the other Party, take reasonable steps to recover any compromised or lost Confidential Information.
2. Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" means any tangible or intangible information relating to or disclosed in the course of performing the Agreement that is marked or designated as confidential by the disclosing Party, including, without limitation, designs, specifications, routines, protocols, formulas, source codes, technical processes, unpublished financial information, product and business plans, projections, customer information and employee information. "Confidential Information" does not include information that (i) becomes publicly known through no fault of the receiving Party, (ii) is lawfully received from a third party not bound by confidentiality obligations, or (iii) is independently developed by a Party at its own expense or under contract with third parties without using any Confidential Information of the other Party.

## 6. INDEMNIFICATION.

1. Indemnity. Customer agrees to indemnify, defend, and hold Promoshin and its Affiliates (the "Indemnified Party") free and harmless from all third-party claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, attorneys' fees, and costs, that the Indemnified Party actually incurs as a result of a breach of any representation or agreement contained herein by Customer.
2. Indemnification Procedures. The obligation of a Party ("Indemnitor") to indemnify the other Party ("Indemnatee") is subject to the condition that the Indemnatee has given prompt written notice of any request for indemnity to the Indemnitor, that the Indemnitor has been permitted to control the defense and settlement of the claim or legal action with counsel of its choice, and that the Indemnatee has reasonably cooperated, at its own expense, with the Indemnitor in the defense and settlement of the claim or legal action, making available all information and assistance that the Indemnitor may have reasonably requested.

## 7. TERM AND TERMINATION.

1. Term of Agreement. This Agreement shall be effective as of the Effective Date and shall continue for the duration Production Services are being provided pursuant to this Agreement.
2. Termination for Breach. Either Party may terminate this Agreement upon the failure of the other Party to correct a material breach of its obligations hereunder within thirty (30) days after written notice of such breach is provided by the non-breaching Party to the other Party.
3. Obligations Upon Termination. Upon any termination of this Agreement, the Parties shall return to each other any and all Confidential Information and any and all equipment, documents and materials, including all copies thereof, which it received from the other Party in connection with this Agreement. Customer shall return all Promoshin IP to Promoshin upon the termination of this Agreement.
4. Remedies for Breach of Agreement. If termination is the result of a material breach by Customer, the Promoshin shall be entitled to pursue any and all rights and remedies it has under law; and Customer shall pay Promoshin for all fees accrued prior to the date of termination.
5. Survival Provisions. Termination of the Agreement shall not relieve either Party from its continuing obligation to protect Confidential Information and proprietary rights of the other Party. In addition, the rights and obligations of the Parties under Sections 1.5, 1.6, 1.7, 2, 3, 4, 5, 6, 7.3, 7.4, 7.5, and 8 shall survive the expiration or termination of this Agreement.

## 8. GENERAL.

1. Relationship Between Parties. Neither Party shall be deemed to be an employee, agent or partner of the other in connection with this Agreement. Neither Party shall have any right or authority to assume or create any obligation or responsibility, either express or implied, on behalf of the other Party. The Parties shall be and remain independent contractors with respect to this Agreement.
2. Governing Law. This Agreement shall in all respects be interpreted, construed in accordance with and governed by the laws of the State of California, without regard to its conflict of law rules. The Parties specifically exclude the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods, if otherwise applicable.
3. Venue and Jurisdiction Provisions. In the event of any litigation between the Parties, the Parties agree that the sole and exclusive venue and jurisdiction for any such action shall be in the Central District of California. The Parties agree that the above referenced courts shall have personal and exclusive jurisdiction over the Parties for any dispute arising out of this Agreement that is not covered by the arbitration provisions set forth herein.
4. Binding Arbitration. Any controversy or claim arising out of, relating to or connected with this Agreement, or the breach thereof, shall be resolved by binding arbitration in accordance with the

International Chamber of Commerce Rules of Arbitration, and judgment confirming the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Any arbitration under this Agreement shall be administered in Los Angeles County. The arbitrator(s) shall have no authority to award punitive damages, but may award equitable relief. The arbitrator(s) shall enforce the terms of this Agreement, and to the extent it is necessary and appropriate to go outside the terms of the Agreement to reach a decision, the arbitrator(s) shall follow the applicable law.

5. Notices. All notices, demands, requests, or consents ("Notices") required or permitted under this Agreement shall be in writing and shall be delivered by e-mail with receipt confirmed (also by e-mail), personally to an officer of a Party, mailed by certified or registered mail, sent by Federal Express, UPS, DHL, or other internationally recognized express courier (each a "Courier"), or delivered by conspicuous notification on the Promoshin website. The Notice sending party shall make commercially reasonable efforts to send Notices to the correct address. Notices shall be effective on the earlier of confirmation of receipt and five (5) days after deposit with all charges prepaid with a Courier.
6. Severability. If any one or more of the provisions of this Agreement is held to be illegal or unenforceable, such illegality or unenforceability shall not affect the other provisions of this Agreement, which shall remain in full force and effect.
7. Force Majeure. Neither Party will be liable for any failure to perform due to unforeseen circumstances or causes beyond such Party's reasonable control, including, without limitation, acts of God, war, riot, acts of civil or military authorities, delay in delivery by Promoshin's vendors, fire, flood, accident, strikes, inability to secure communication or transportation facilities or labor or materials. In the event of a force majeure event, such Party's time for delivery or other performance will be extended for a period equal to the duration of the delay caused thereby.
8. Entire Agreement. This Agreement is the entire agreement between the Parties and supersedes all proposals, all prior agreements, commitments, oral or written, and all negotiations, conversations or discussions between the Parties relating to this Agreement.
9. Modifications. This Agreement may be modified from time to time by Promoshin, subject to Promoshin providing notice thereof to Customer not less than thirty (30) days in advance, and Customer not providing Promoshin with formal written objection within thirty (30) days of the date of such notice.
10. Headings. Headings included in this Agreement are for convenience only and are not to be used to interpret the provisions of the Agreement between the Parties.
11. Assignment. The rights and obligations of Customer hereunder may not be assigned or delegated without the prior express written permission of Promoshin. The terms of this Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns.
12. Waiver. The failure of either Party to enforce at any time any of the provisions hereof shall not be construed to be a waiver of the right of such Party thereafter to enforce any such provisions.
13. Benefit. This Agreement is made for the benefit of each of the Parties and not for the benefit of any other persons.
14. Attorneys' Fees. In any litigation or arbitration between the Parties, the prevailing Party shall be entitled to reasonable attorney fees and all costs incurred in connection with such proceedings.
15. No Presumption. There shall be no presumption applied against any Party on the ground that such Party was responsible for preparing this Agreement or any part of it.
16. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.