

**Terms of Use**  
**Last Updated May 10, 2016**

SKIA, Inc. (“SKIA,” “we,” “us,” or “our”) welcomes you. We invite you to access our website, located at skia.mobi (the “Site”), and to access and use our proprietary SKIA app (the “App”), which is made available to you via mobile application. Please read these Terms of Use carefully.

We provide access to our Site and App subject to the following Terms of Use, which may be updated by us from time to time without notice to you. You should check back here often to ensure that you are familiar with our current terms. By accessing and using the Site or the App or by clicking “I AGREE” upon registration, you acknowledge that you have read, understood, and agree to be legally bound by the terms and conditions of these Terms of Use and the terms and conditions of our Privacy Policy, which is hereby incorporated by reference (collectively, this “Agreement”). If you do not agree to any of these terms, then please do not use the Site or the App.

**THE SECTIONS BELOW TITLED “BINDING ARBITRATION” AND “CLASS ACTION WAIVER” CONTAIN A BINDING ARBITRATION AGREEMENT AND CLASS ACTION WAIVER. THEY AFFECT YOUR LEGAL RIGHTS. PLEASE READ THEM.**

Capitalized terms not defined in these Terms of Use shall have the meaning set forth in our Privacy Policy.

**1. DESCRIPTION OF THE APP**

SKIA is a revolutionary application that automatically captures your interactions with the world and reconstructs your life story with the people most important to you... and everybody else! SKIA is the first application that can capture and reconstruct real-life events precisely, all without explicitly storing where you go or who you meet.

When you register to use the App, you become a SKIA “Registered User” with access to all the features our App has to offer. As a Registered User, you can: (i) create, access, manage, and update your own personal accounts on the App; (ii) share pictures, text, video, audio, images or other content (collectively, “Registered User Content”) through the App, on social media or through another similar service; (iii) sign up for alerts and other notifications; and (iv) contact us via e-mail. Registered Users also have the option to share Registered User Content via e-mail and SMS. You may choose to give SKIA access to your e-mail and SMS features on your mobile device for this purpose, in which case standard SMS fees may apply as charged by your wireless carrier.

SKIA is under no obligation to accept any individual as a Registered User and may accept or reject any registration in its sole and complete discretion. In addition, SKIA may deactivate or suspend any account at any time, including, without limitation, if it determines that a Registered User has violated these Terms of Use.

## 2. **COMMUNITY GUIDELINES**

SKIA's community, like any community, functions best when its members follow a few simple rules. By accessing and/or using the Site or the App, you hereby agree to comply with these community rules and that:

- You will comply with all applicable laws in your use of the Site and the App and will not use the Site or the App for any unlawful purpose;
- You will not upload, post, e-mail, transmit, or otherwise make available any content that:
  - infringes any copyright, trademark, right of publicity, or other proprietary rights of any person or entity; or
  - is defamatory, libelous, indecent, obscene, pornographic, sexually explicit, invasive of another's privacy, promotes violence, or contains hate speech (i.e., speech that attacks or demeans a group based on race or ethnic origin, religion, disability, gender, age, veteran status, and/or sexual orientation/gender identity; or
  - publicly discloses any sensitive information about another person, including that person's e-mail address, postal address, phone number, credit card information, or any similar information.
- You will not "stalk," threaten, or otherwise harass another person;
- You will not access or use the Site or the App to collect any market research for a competing business;
- You will not impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity;
- You will not interfere with or attempt to interrupt the proper operation of the Site or the App through the use of any virus, device, information collection or transmission mechanism, software or routine, or access or attempt to gain access to any data, files, or passwords related to the Site or the App through hacking, password or data mining, or any other means;
- You will not cover, obscure, block, or in any way interfere with any safety features (e.g., report abuse button) on the Site or the App;
- You will not use any robot, spider, scraper, or other automated means to access the Site or the App for any purpose without our express written permission; provided, however, we grant the operators of public search engines permission

to use spiders to copy materials from the public portions of the Site or the App for the sole purpose of and solely to the extent necessary for creating publicly-available searchable indices of the materials, but not caches or archives of such materials;

- You will not take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our technical infrastructure; and
- You will let us know about inappropriate content of which you become aware.

We have the right, but not the obligation, to review and remove any content that is provided to the Site or the App. We also reserve the right, in our sole and absolute discretion, to deny you access to the Site or the App, or any portion of the Site or the App, without notice.

If you have downloaded the App from the Apple, Inc. ("Apple") application store, you will use the App only: (i) on an Apple-branded product that runs iOS (Apple's proprietary operating system software); and (ii) as permitted by the "Usage Rules" as defined and set forth in the Apple App Store Terms of Service.

### **3. RESTRICTIONS**

The Site and the App are only available for individuals aged 13 years or older. If you are 13 or older, but under the age of majority in your jurisdiction, you should review this Agreement with your parent or guardian to make sure that you and your parent or guardian understand it.

### **4. SIGN-IN NAME; PASSWORD; UNIQUE IDENTIFIERS**

If you are a Registered User and do not log into the App using a third-party login provider (e.g., Facebook, Google, Twitter, LinkedIn), you will be prompted to create an account, which includes a sign-in name ("Sign-In Name"), a password ("Password"), and perhaps certain additional information that will assist in authenticating your identity when you log-in in the future ("Unique Identifiers"). When creating your account, you must provide true, accurate, current, and complete information. Each Sign-In Name and corresponding Password can be used by only one Registered User. You are solely responsible for the confidentiality and use of your Sign-In Name, Password, and Unique Identifiers, as well as for any use, misuse, or communications entered or payments made through the App using one or more of them. You will promptly inform us of any need to deactivate a Password or Sign-In Name, or change any Unique Identifier. We reserve the right to delete or change your Password, Sign-In Name, or Unique Identifier at any time and for any reason and shall have no liability to you for any loss or damage caused by such action. SKIA will not be liable for any loss or damage caused by any unauthorized use of your account.

## **5. INTELLECTUAL PROPERTY**

The Site and the App contain material, such as software, text, graphics, images, designs, sound recordings, audiovisual works, and other material provided by or on behalf of SKIA (collectively referred to as the “Content”). For avoidance of doubt, Content does not include your Registered User Content. The Content may be owned by us or third parties. The Content is protected under both United States and foreign laws. Unauthorized use of the Content may violate copyright, trademark, and other laws. You have no rights in or to the Content, and you will not use the Content except as permitted under this Agreement. No other use is permitted without prior written consent from us. You must retain all copyright and other proprietary notices contained in the original Content on any copy you make of the Content. You may not sell, transfer, assign, license, sublicense, or modify the Content or reproduce, display, publicly perform, make a derivative version of, distribute, or otherwise use the Content in any way for any public or commercial purpose. The use or posting of the Content on any other website or in a networked computer environment for any purpose is expressly prohibited.

If you violate any part of this Agreement, your permission to access and/or use the Content, the Site and the App automatically terminates and you must immediately destroy any copies you have made of the Content.

The trademarks, service marks, and logos of SKIA (the “SKIA Trademarks”) used and displayed on the Site and the App are registered and unregistered trademarks or service marks of SKIA. Other company, product, and service names located on the Site or the App may be trademarks or service marks owned by others (the “Third-Party Trademarks,” and, collectively with SKIA Trademarks, the “Trademarks”). Nothing on the Site or the App should be construed as granting, by implication, estoppel, or otherwise, any license or right to use the Trademarks, without our prior written permission specific for each such use. Use of the Trademarks as part of a link to or from any site is prohibited unless establishment of such a link is approved in advance by us in writing. All goodwill generated from the use of the SKIA Trademarks inures to our benefit.

Elements of the Site and the App are protected by trade dress, trademark, unfair competition, and other state and federal laws and may not be copied or imitated in whole or in part, by any means, including, but not limited to, the use of framing or mirrors. None of the Content may be retransmitted without our express, written consent for each and every instance.

## **6. REGISTERED USER CONTENT; LICENSES**

As noted above, the App provides Registered Users the ability to post, upload and share Registered User Content. Please keep in mind that, by uploading Registered

User Content (e.g., by sharing your media with other app users or those who have not yet downloaded the App), or by otherwise interacting with the App, you will often be making your Personal Information available to third parties. You expressly acknowledge and agree that once you choose to share your Registered User Content through the App, it will be accessible by others, and that there is no confidentiality or privacy with respect to such Registered User Content, including, without limitation, any personally identifying information that you may make available. YOU, AND NOT SKIA, ARE ENTIRELY RESPONSIBLE FOR ALL REGISTERED USER CONTENT THAT YOU UPLOAD, POST, E-MAIL, OR OTHERWISE TRANSMIT VIA THE APP, AND YOU WILL INDEMNIFY US IN RESPECT OF ANY LOSS, LIABILITY, CLAIM, OR DAMAGE SUFFERED OR INCURRED BY US IN CONNECTION WITH ANY SUCH REGISTERED USER CONTENT.

You retain all copyrights and other intellectual property rights in and to your own Registered User Content. You do, however, hereby grant us and our sublicensees a non-exclusive, royalty-free, freely sublicensable, perpetual, irrevocable license to compile, combine with other content, copy, record, synchronize, transmit, translate, format, distribute, publicly display, publicly perform, and otherwise use or exploit (including for profit) your Registered User Content and all intellectual property and moral rights therein throughout the universe, in each case, by or in any means, methods, media, or technology now known or hereafter devised. You also grant us and our sublicensees the right, but not the obligation, to use your Registered User Content, your Sign-In Name, name, likeness, and photograph in connection with any use of the related Registered User Content permitted by the previous sentence.

If you submit Registered User Content to us, each such submission constitutes a representation and warranty to SKIA that such Registered User Content is your original creation (or that you otherwise have the right to provide the Registered User Content), that you have the rights necessary to grant to SKIA the license to the Registered User Content as set forth above, and that it and its use by SKIA and as permitted by this Agreement does not and will not infringe or misappropriate the intellectual property or moral rights of any person, or contain any libelous, defamatory, or obscene material or content that violates our Community Guidelines.

## **7. ACCESSING AND DOWNLOADING AN APP FROM APPLE**

If you have downloaded the App from the Apple application store, the following terms apply to the App. These terms are in addition to all other terms contained in these Terms of Use:

- You acknowledge and agree that (i) these Terms of Use are concluded between you and SKIA only, and not Apple, and (ii) SKIA, not Apple, is solely responsible for the App and content thereof. Your use of the App must comply with the App Store Terms of Service.

- You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App.
- In the event of any failure of the App to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the App to you and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App. As between SKIA and Apple, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of SKIA.
- You acknowledge that, as between SKIA and Apple, Apple is not responsible for addressing any claims you have or any claims of any third party relating to the App or your possession and use of the App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
- You acknowledge that, in the event of any third party claim that the App or your possession and use of that App infringes that third party's intellectual property rights, as between SKIA and Apple, SKIA, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by these Terms of Use.
- You represent and warrant that (i) you are not located in a country that is subject to a U.S. government embargo, or that has been designated by the U.S. government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. government list of prohibited or restricted parties.
- You acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of these Terms of Use as related to your license of the App, and that, upon your acceptance of the terms and conditions of these Terms of Use, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms of Use as related to your license of the App against you as a third party beneficiary thereof.
- Without limiting any other terms of these Terms of Use, you must comply with all applicable third-party terms of agreement when using the App.

## **8. COMMUNICATIONS WITH US**

Although we encourage you to e-mail us, we do not want you to, and you should not, e-mail us any content that contains confidential information. With respect to all e-mails and communications you send to us, including, but not limited to, feedback, questions, comments, suggestions, and the like, we shall be free to use any ideas, concepts, know-how, or techniques contained in your communications for any purpose whatsoever, including but not limited to, the development, production, and marketing of products and services that incorporate such information without compensation or attribution to you.

## **9. NO WARRANTIES; LIMITATION OF LIABILITY**

THE SITE, THE APP AND THE CONTENT ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY WARRANTIES OF ANY KIND, INCLUDING THAT THE SITE AND THE APP WILL OPERATE ERROR-FREE, THAT THE SITE, THE APP, ITS SERVERS, OR THE CONTENT ARE FREE OF COMPUTER VIRUSES OR SIMILAR CONTAMINATION OR DESTRUCTIVE FEATURES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS: (I) WE SHALL NOT BE SUBJECT TO LIABILITY FOR ANY DELAYS OR INTERRUPTIONS OF THE SITE OR THE APP FROM WHATEVER CAUSE OR FOR ANY DEFECTS, MALFUNCTIONS, OR FAILURE OF THE PRODUCTS, AND YOU AGREE THAT YOU USE THE SITE, THE CONTENT AND THE APP AT YOUR OWN RISK; (II) WE DISCLAIM ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTIES' RIGHTS, AND FITNESS FOR PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE; AND (III) WE SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION DIRECT, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION) RESULTING FROM YOUR USE OR INABILITY TO ACCESS AND USE THE SITE, THE APP OR THE CONTENT OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IF YOUR USE OF THE SITE, THE APP OR THE CONTENT RESULTS IN THE NEED FOR SERVICING OR REPLACING EQUIPMENT OR DATA, WE SHALL NOT BE RESPONSIBLE FOR THOSE COSTS UNLESS REQUIRED BY APPLICABLE LAWS.

THE SITE OR THE APP MAY CONTAIN TECHNICAL INACCURACIES OR TYPOGRAPHICAL ERRORS OR OMISSIONS. UNLESS REQUIRED BY APPLICABLE LAWS, WE ARE NOT RESPONSIBLE FOR ANY SUCH TYPOGRAPHICAL OR TECHNICAL ERRORS. WE RESERVE THE RIGHT TO MAKE CHANGES, CORRECTIONS, AND/OR IMPROVEMENTS TO THE SITE AND THE APP AT ANY TIME WITHOUT NOTICE.

YOU ACKNOWLEDGE THAT ALL REGISTERED USER CONTENT IS PROVIDED BY REGISTERED USERS, AND NOT BY US. SKIA IS NOT RESPONSIBLE FOR REVIEWING, POLICING, REMOVING, OR CORRECTING ANY REGISTERED USER CONTENT, AND SKIA SHALL NOT HAVE ANY LIABILITY WITH RESPECT TO ANY REGISTERED USER CONTENT. WE DO NOT GUARANTEE THE QUALITY OR ACCURACY OF ANY REGISTERED USER CONTENT AND WE HEREBY DISCLAIM

ALL DECISIONS MADE BASED UPON SUCH REGISTERED USER CONTENT. ALL SUCH DECISIONS ARE MADE AT YOUR OWN DISCRETION AND RISK.

## **10. EXTERNAL SITES**

The Site and the App may contain links to third-party websites ("External Sites"). These links are provided solely as a convenience to you and not as an endorsement by us of the content on such External Sites. The content of such External Sites is developed and provided by others. You should contact the site administrator or webmaster for those External Sites if you have any concerns regarding such links or any content located on such External Sites. We are not responsible for the content of any linked External Sites and do not make any representations regarding the content or accuracy of materials on such External Sites. You should take precautions when downloading files from all websites to protect your computer from viruses and other destructive programs. If you decide to access linked External Sites, you do so at your own risk.

## **11. INDEMNIFICATION**

You agree to defend, indemnify, and hold us and our officers, directors, employees, successors, licensees, and assigns harmless from and against any claims, actions, or demands, including, without limitation, reasonable legal and accounting fees, arising or resulting from your breach of this Agreement, any Registered User Content that you provide, or your access to, use, or misuse of the Site, the Content or the App. We shall provide notice to you of any such claim, suit, or proceeding and shall assist you, at your expense, in defending any such claim, suit, or proceeding. We reserve the right, at your expense, to assume the exclusive defense and control of any matter that is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting our defense of such matter.

## **12. COMPLIANCE WITH APPLICABLE LAWS**

The Site and the App are based in the United States. We make no claims concerning whether the Content may be downloaded, viewed, or be appropriate for use outside of the United States. If you access or use the Site or the App or the Content from outside of the United States, you do so at your own risk. Whether inside or outside of the United States, you are solely responsible for ensuring compliance with the laws of your specific jurisdiction.

## **13. TERMINATION OF THE AGREEMENT**

We reserve the right, in our sole discretion, to restrict, suspend, or terminate this Agreement and your access to all or any part of the Site and the App, at any time and for any reason without prior notice or liability. We reserve the right to change, suspend, or discontinue all or any part of the Site and the App at any time without prior notice or liability.

#### **14. COMMUNICATIONS DECENCY ACT NOTICE**

Through the App, we are a provider of “interactive computer services” as defined under the Communications Decency Act, 47 U.S.C. Section 230, and as such, our liability for defamation, libel, disparagement, and other claims arising out of any Registered User Content is limited as described therein. We are not responsible for any Registered User Content or any other information posted to the App by third parties. We neither warrant the accuracy of such Registered User Content or exercise any editorial control over such Registered User Content, nor do we assume any legal obligation for editorial control of Registered User Content posted by third parties or liability in connection with such Registered User Content, including any responsibility or liability for investigating or verifying the accuracy of any Registered User Content or any other information contained in such Registered User Content.

#### **15. DIGITAL MILLENNIUM COPYRIGHT ACT**

SKIA respects the intellectual property rights of others and attempts to comply with all relevant laws. We will review all claims of copyright infringement received and remove any Registered User Content deemed to have been posted or distributed in violation of any such laws.

Our designated agent under the Digital Millennium Copyright Act (the “Act”) for the receipt of any Notification of Claimed Infringement which may be given under that Act is as follows:

Copyright Agent,  
SKIA, Inc.,  
160 Greentree Drive, Suite 101,  
City of Dover, County of Kent, Delaware 19904

dmca@skia.mobi

If you believe that your work has been copied on the App in a way that constitutes copyright infringement, please provide our agent with notice in accordance with the requirements of the Act, including (i) a description of the copyrighted work that has been infringed and the specific location on the App where such work is located; (ii) a description of the location of the original or an authorized copy of the copyrighted work; (iii) your address, telephone number and e-mail address; (iv) a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent or the law; (v) a statement by you, made under penalty of perjury, that the information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner’s behalf; and (vi) an electronic or physical signature of the owner of the copyright or the person authorized to act on behalf of the owner of the copyright interest.

## **16. BINDING ARBITRATION**

In the event of a dispute arising under or relating to this Agreement, the Site, the Content, or the App (each, a “Dispute”), either party may elect to finally and exclusively resolve the dispute by binding arbitration governed by the Federal Arbitration Act (“FAA”). Any election to arbitrate, at any time, shall be final and binding on the other party. IF EITHER PARTY CHOOSES ARBITRATION, NEITHER PARTY SHALL HAVE THE RIGHT TO LITIGATE SUCH CLAIM IN COURT OR TO HAVE A JURY TRIAL. DISCOVERY AND APPEAL RIGHTS MAY ALSO BE LIMITED IN ARBITRATION. All disputes will be resolved before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the FAA. Any court in San Francisco, California may enforce the arbitrator’s award. The arbitration shall be administered by the Judicial Arbitration and Mediation Services (“JAMS”) pursuant to JAMS’ Streamlined Arbitration Rules and Procedures, if applicable, or otherwise pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules (the “JAMS Rules”). Such disputes will be resolved by the arbitrator as determined under the JAMS Rules. The arbitration may be conducted in person, through the submission of documents, by phone, or online. If conducted in person, the arbitration shall take place in San Francisco, California. The parties may litigate in court to compel arbitration, to stay proceeding pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator. In addition, we may litigate in court to seek injunctive relief.

## **17. CLASS ACTION WAIVER**

You agree that any arbitration or proceeding shall be limited to the Dispute between us and you individually. To the full extent permitted by law, (i) no arbitration or proceeding shall be joined with any other; (ii) there is no right or authority for any Dispute to be arbitrated or resolved on a class action-basis or to utilize class action procedures; and (iii) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons. YOU AGREE THAT YOU MAY BRING CLAIMS AGAINST US ONLY IN YOUR INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

## **18. MISCELLANEOUS**

YOU AGREE THAT, UNLESS CONTRARY TO ANY APPLICABLE LAW, ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SITE, THE APP, THE CONTENT, OR THIS AGREEMENT MUST BE COMMENCED BY YOU WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE SUCH CAUSE OF ACTION IS PERMANENTLY BARRED. This Agreement and any action related thereto will be governed by the laws of the State of California without regard to its conflict of laws provisions. If any provision of this Agreement is held to be invalid, illegal,

or unenforceable by a court of competent jurisdiction, such provision will be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intentions of the parties, and the remainder of the Agreement will remain in full force and effect. The following provisions will survive any expiration or termination of this Agreement: “Intellectual Property,” “Registered User Content; Licenses,” “Communications with Us,” “No Warranties; Limitation of Liability,” “Indemnification,” “Termination of the Agreement,” “Communications Decency Act Notice,” “Digital Millennium Copyright Act,” “Binding Arbitration,” “Class Action Waiver,” and “Miscellaneous.”

Our failure to act on or enforce any provision of the Agreement shall not be construed as a waiver of that provision or any other provision in this Agreement. No waiver shall be effective against us unless made in writing, and no such waiver shall be construed as a waiver in any other or subsequent instance. Except as expressly agreed by us and you in writing, this Agreement constitutes the entire Agreement between you and us with respect to the subject matter, and supersedes all previous or contemporaneous agreements, whether written or oral, between the parties with respect to the subject matter. The section headings are provided merely for convenience and shall not be given any legal import. This Agreement will inure to the benefit of our successors, assigns, licensees, and sublicensees.

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