



TERMS & CONDITIONS OF SERVICE

Article 1 - Recitals

The following Terms & Conditions shall apply to each and every Purchase Order submitted by the Client to vpod.tv. By signing the Purchase Order the Client accepts the following Terms & Conditions of Service and irrevocably waives its own terms of service or terms of purchase, even if subsequent to these Terms & Conditions of Service.

Article 2 - Definitions

For purposes of these Terms & Conditions of Service, the following terms shall have the following meaning:

- **"Agreement"** shall mean the contractual documents which include the Terms & Conditions of Service, the Purchase Order(s) and its/their addenda, and the Road Map.
- **"API"** shall mean the public application programming interfaces available on vpod.tv's platform which allow providing the Service.
- **"Client"** shall mean the company counterparty to vpod.tv and ordering the Service as described in the Purchase Order.
- **"Content"** shall mean all videos (including their visual, graphic, audio, text and other components), pictures, audio files, comments, illustrations, audio contents, blogs, hyperlinks and any other content Uploaded by the Client.
- **"Purchase Order"** shall mean the purchase order appended thereto and which form a part of the Agreement. The Purchase Order describes the content of the Service ordered, the financial conditions and particular conditions if any of the Service.
- **"Party"** shall mean either vpod.tv or the Client.
- **"Player"** shall mean the Content display software, providing computer readable Contents accessed through the internet or any other media.
- **"Road Map"** shall mean the specifications and deadlines applicable to the provision of the Service which the parties shall sign and attach to the Purchase Order or specify in the Purchase Order and to these Terms & Conditions of Service in order to form part of this Agreement.
- **"Service"** shall mean the service provided by vpod.tv to the Client, in accordance with the provisions of the Agreement.
- **"Terms & Conditions of Service"** shall mean these B to B terms and conditions of service applicable to the Agreement entered into with the Client.
- **"Upload"** shall mean the transfer of Content from a computer or an electronic device (including a mobile phone) to another.
- "vpod.tv" shall mean the B to B service provider VIDEO PUBLISHING ON DEMAND SA, a Limited company existing and organized under the laws of France, registered with RCS number: 490 060 787 having its registered office at 11, rue de la Boétie 75008 Paris,(France), represented by its General manager duly empowered to that purpose.



Article 3 - Purpose

The purpose of these Terms & Conditions of Service is to define the conditions under which vpod.tv shall provide the Service to the Client. Each and every use of the Service by the Client shall be made in accordance with such Terms & Conditions of Service and with the Agreement as a whole.

Unless otherwise specified in the Purchase Order, the Service includes:

- 1. Hosting:** hosting capacity for the storage of the Client's Contents, so as to enable access to such Content, if no special conditions mentioned in the Purchase Order, price of storage will be priced 0,5 Cents per GB per month.
- 2. Encoding:** processing capacity destined to codify the Client's Contents, so as to enable access to such Content through various telecommunication media and on various telecommunication devices.
- 3. Publishing:** publishing of pre-encoded Content to the benefit of the Client.
- 4. Management:** management interface for the management of Contents by the Client.

Article 4 – Duration and effective date

The Agreement shall be effective as of the date of execution of the Purchase Order by the Client and shall continue for the duration specified in the Purchase Order. Upon termination of such initial term, the Agreement shall renew tacitly for consecutive 12-month periods. Each Party may terminate the Agreement on each anniversary date, subject to a minimum 3-month prior notice sent by registered letter with receipt requested.

Article 5 – Use and provision of the Service

The Client agrees to comply with the technical requirements provided by vpod.tv for the use of the Service from time to time. Those requirements shall be provided in writing. Such technical requirements may evolve based on technical evolutions or changes in the requirements for the management of the Service. vpod.tv will duly inform the Client in writing in respect to those evolutions or changes in advance for Client to adapt to the new technical requirements.

The Purchase Order indicates the hosting capacity which is allowed to the Client for hosting purposes and the technical requirements such as the maximum size of each Uploaded Content. The Purchase Order may provide for other requirements such as the maximum authorized duration for broadcast and the maximum APIs requests. The Client may request changes to those requirements at any time during the duration of the Agreement, which vpod.tv shall provide, except if impeded for technical reasons.

For technical reasons, vpod.tv reserves the right to temporarily change the hosting capacity allowed to the Client upon a written notice of at least 8 days. The change in capacity shall not extend to more than [15] consecutive days. If such deadline is exceeded, the Client will be entitled to terminate this Agreement as provided in Article 15.1.

vpod.tv will provide the Service as established in these Term & Conditions of Service, as well as in the Purchase Order and Road Map. In particular, vpod.tv will provide the Client Services related to grant the Client access to the Service, namely to the hardware and software located in vpod.tv's facilities, as well as to duly install and implement the software to be located at the Client's premises also for the use of the Service, as indicated in the documents referred to above.

Article 6 – Intellectual property



1. Intellectual property rights. vpod.tv holds all intellectual property rights in the Service, whether directly or by license. Such rights shall include (but shall not be limited to) rights in and to databases, applications, software, information, know-how, specifications and more generally the conception and design of the Service and its components owned by vpod.tv or by third party licensors, and all intellectual property rights on such elements such as (but not limited to) copyright, patents, inventions, trademarks, trade and corporate names and any other right which may be related to the provision of the Service by vpod.tv.

The Clients holds all intellectual property rights in the Uploaded Contents, whether directly or by license. Such rights shall include (but shall not be limited to) rights in and to any elements of the Contents, and all intellectual property rights on such elements such as (but not limited to) copyright, patents, inventions, trademarks, trade and corporate names and any other right which may be related to them.

2. Consequences. Subject to Article 6.3 below, vpod.tv retains all intellectual property rights in the Service. The Client accordingly undertakes not to reproduce or otherwise exploit any above mentioned element by whichever means or form, and more generally not to use or exploit the elements provided by vpod.tv otherwise than in execution of this Agreement. The Client shall not, directly or indirectly, file, register or claim any intellectual property right including any right in relation to the Service or any portion thereof.

Subject to Article 6.4 below, the Client retains all intellectual property rights in the Contents. vpod.tv accordingly undertakes not to reproduce or otherwise exploit in whole or in part the Contents by whichever means or form, and more generally not to use them otherwise than in execution of this Agreement or or allow any third party to use them. vpod.tv shall not, directly or indirectly, file, register or claim any intellectual property right including any right in relation to the Contents or any portion thereof.

3. Licence granted to the Client. vpod.tv hereby grants the Client a limited right to use the Player, widgets or Full screen interfaces and any other software necessary to use the Service for the duration of this Agreement, for the sole purpose of using the Service and subject to the limitations provided for in these Terms & Conditions of Service. This right to use is personal and shall not be assigned. The Client shall not copy, duplicate, decompile or publish the Player or any other application which it might access by using the Service, except as otherwise permitted by the applicable laws.

4. Licence granted by the Client. The Client acknowledges that the performance of the Service may require the reproduction of elements of the Contents protected by intellectual property. The Client grants vpod.tv a limited right to carry out technical reproductions of the Contents for the sole purpose of providing the Service as provided in this Agreement. Such license shall include, but shall not be limited to, the right to technically reproduce the Contents as provided herein above in the territories where its technological systems are located for the sole purpose of performing the Service.

5. Deposit of the source code. vpod.tv will escrow the source code of its proprietary software necessary for the performance of the Service. The Client holds no right in or title to such source code except as provided herein below. Upon request of the Client and within the limit of one request per year, vpod.tv shall provide to the Client a copy of the record certifying the deposit of the source code with the Agence pour la Protection des Programmes (APP : 119, rue de Flandres 75019 Paris, France).

In the event of a default of the compliance by vpod.tv of the Agreement, the Client may access the source code under the control of the APP Arbitration Commission pursuant to Article 6 of the APP By laws. Such access shall be authorized only if one of the following occurs: vpod.tv ceases its activities without resumption by a third party; the maintenance on the software ceases to be provided and such interruption entails a complete Service



disruption.

vpod.tv shall maintain such deposit effective and updated with all major new versions of its software for the duration of the Agreement, and will deposit a full copy at least once a year. The source code shall be deposited on machine-readable magnetic or optic recordings. vpod.tv shall bear the subscription and renewal fees.

As regards source code of standard software owned by third parties and on which vpod.tv has a right to exploit to the benefit of the Client, vpod.tv shall obtain escrow the related source code with a right to access on the benefit of the Client under the same conditions as set out otherwise in this Article.

Article 7 – Price of the Service and terms of payment

1. Price. Each party will bear the cost of all rights, taxes and fees which may apply to the provision or reception of the Service as established in the applicable laws. The prices set out in the Purchase Order are the prices agreed by the parties for the provision of the Service by vpod.tv. Where the Purchase Order provides for a duration of more than one year or where the Agreement is renewed, vpod.tv shall have the right to adjust its prices in accordance with the evolution of the French Syntec index for each additional year. Such revision shall be effective on each anniversary date of the Agreement, upon notice by vpod.tv. If the Client does not agree with the adjustment in the prices proposed by vpod.tv, the parties will negotiate in good faith the applicable prices.

2. Invoicing. Invoices shall be issued annually, payable in advance, unless otherwise specified in the Purchase Order.

3. Payment. Invoices shall be paid on receipt. In case of late payment of any amount due for more than 30 days from the invoice date, vpod.tv shall automatically apply late penalties calculated with rate EURIBOR rate adding 4 points, unless otherwise specified in the Purchase Order.

Article 8 – Liability of vpod.tv

It is expressly agreed that vpod.tv will be fully liable for the correct provision of the Service in compliance with these Terms & Conditions of Service, as well as with the terms of the corresponding Purchase Order and with the specifications and the deadlines agreed by the parties in the Road Map. .

vpod.tv shall not be liable under any circumstances for indirect or consequential damages such as financial or commercial loss, loss of customers, profits loss, loss of image, loss of Content or data including any files whatsoever, which may result from an inappropriate use of the Service by the Client against the specific indications provided by vpod.tv.

In any case, vpod.tv's liability under the Agreement shall be limited to 20 % of the annual amount of the Agreement, including all damage caused to the Client's facilities as hosted by vpod.tv.

Article 9 – Warranty of vpod.tv

Subject to the limitation of liability established in Article 8 above, vpod.tv grants the following warranties related to the provision of the Service:

Service. vpod.tv guarantees that it will provide the Service in the terms and within the deadlines established in the Purchase Order and the Road Map. Access to the Service may only be interrupted temporarily for technical reasons. In such a case, vpod.tv guarantees that



the interruption will not last longer than [3] days. If such deadline is exceeded, the Client will be entitled to terminate this Agreement as provided in Article 15.1.

vpod.tv further guarantees that the compressing and automatic encoding of the Contents to be provided as part of the Service will preserve the integrity and quality of the Contents as permitted by the applied technology. However, vpod.tv will not be responsible for degradations of quality due to mere technical reasons.

vpod.tv also guarantees the correct functioning of all the elements which are part of the provision of the Service, namely the software and related applications and tools, and that it will carry out all necessary activities to correct any error or malfunctioning of those elements upon request by the Client, as agreed in the Purchase Order and Road Map. In particular, in regard to software, vpod.tv will correct or replace, at vpod.tv' option, any software found defective. If during the execution of this Agreement, vpod.tv is unable to correct the defects of the software used in the provision of the Service, or if the replaced software is also defective, then the Client may terminate this Agreement as provided in Article 15.1.

vpod.tv also guarantees under the maintenance services a response time of 24hours next business day at every request sent by email to support@vpod.tv by registered and authorized users.

Security measures. vpod.tv guarantees that it has implemented will maintain in its systems, software, devices and facilities, all the necessary security measures available in the market and considered state of the art, namely anti-circumvention measures and digital rights management measures, as described in the Road Map for the protection of the Content against illicit access and misuse.

Intellectual property rights. vpod.tv guarantees that the elements of the Service, namely the software and other applications and tools provided as part of the Service, and the entire of the intellectual property rights related to them, including those originally owned by third parties, do not infringe any intellectual property rights or other third party rights or the applicable laws and regulations.

vpod.tv hereby guarantees and holds harmless the Client against all claims, whatever their nature or form, directed against the Client which may directly or indirectly relate to the infringement by those elements of the Service of the applicable laws or any third party rights, including a patent or copyright or trade secret of a third party. vpod.tv shall pay directly to the claimant any amount claimed against the Client, provided that such amount is payable pursuant to a court decision or a settlement agreement. Vpod.tv shall take all procedural steps as it may deem necessary in all legal proceedings initiated or pending against the Client, and shall guarantee and hold the Client harmless against all decisions imposing an obligation on the Client, within the limitation of liability established in Article 8 above.

Article 10 – Warranties of the Client

1. Third parties claims. The Client is solely liable for the lawfulness of the Contents uploaded by itself. The Client hereby guarantees and holds harmless vpod.tv against all claims, whatever their nature or form, directed against vpod.tv which may directly or indirectly relate to the lawfulness of any hosted or published Content. For this purpose, the Client shall pay directly to the claimant any amount claimed against vpod.tv, provided that such amount is payable pursuant to a court decision or a settlement agreement. The Client shall take all procedural steps as it may deem necessary in all legal proceedings initiated or pending against vpod.tv, and shall guarantee and hold vpod.tv harmless against all decisions imposing an obligation on vpod.tv. This warranty applies against third parties as well as against Client's own clients.



2. Duty to care. The Client acknowledges that hosting and publishing on demand videos may breach public policy rules or harm third parties' rights. Upon notice of a breach by any third party, duly justified, or by a competent public authority, the Client shall take all measures necessary to interrupt access to any Content deemed unlawful in compliance with the applicable laws.

Article 11 – Assignment

The Agreement may be assigned by the Client, in whole or in part, only with the previous authorization of vpod.tv and not harming vpod.tv's legitimate interests. vpod.tv may assign the Agreement, subject to the previous authorization of the Client and not harming the Client's legitimate interests.

Article 12 - Confidentiality

Each Party agrees not to disclose to any third party, whether directly or indirectly, in whole or in part, the information of any nature, commercial, industrial, technical, financial, etc. that may have been disclosed by the other Party or which the Party would have been informed of in relation to the execution of the Agreement, without the prior written consent of the other Party. Each Party acknowledges that any disclosure of information without the express prior written consent of the other Party shall cause damage to such Party and shall hold the disclosing Party liable for such disclosure. The Parties agree that this obligation of confidentiality shall remain effective during three (3) years after termination of the Agreement for any reason whatsoever.

Article 13 - Force majeure

The Terms & Conditions of Service shall be automatically suspended pursuant to an event of force majeure, without postponing the termination date of the Agreement. If the event of force majeure continues for over one month, the Terms & Conditions of Service shall be automatically terminated unless the Parties agree otherwise. The Parties agree that an event of force majeure shall have the meaning generally accepted by Spanish courts.

Article 14 – Termination

14.1 – Default

In the event a Party defaults in the performance of any provision of the Agreement, the other Party may send a formal notice to remedy such default by registered letter with receipt requested.

If the defaulting Party has not begun remedying the default within fifteen (15) days after the above mentioned notice, and if, in the following fifteen (15) days or any other time period as agreed between the Parties, the defaulting Party has not fully remedied the default, the other Party may automatically terminate the Agreement, upon notice by registered letter with receipt requested, and with notice of the effective date of such termination, without prejudice of any other rights or compensations which such Party may be entitled to claim.

14.2 – Change of control

The Client may at any time automatically terminate the Agreement in the event of an effective change in the structure of the share capital of vpod.tv resulting in a change in the control of vpod.tv contrary to the Client's legitimate interest. The termination shall be effective upon a thirty (30) days prior notice sent to vpod.tv by registered letter with receipt requested. Any information relating to a change of control shall be notified in writing by vpod.tv within thirty (30) days following the effective change of control. The termination notice provided for in this article shall be made, at the latest, within six weeks of such notice, by registered letter with receipt requested.



In the event of a termination pursuant to this article 15.2, vpod.tv shall be entitled to the sole payment of Services as executed and agreed by the Client until the effective date of termination, and invoiced in proportion to the state of execution of the Services. vpod.tv shall be entitled to no compensation, of any nature, pursuant to termination in case of a change of control.

Upon termination of this Agreement for any reason whatsoever, vpod.tv shall immediately eliminate or return to the Client, as requested by the Client, the Uploaded Contents in use of the Service. vpod.tv shall certify in writing to the Client that all the Contents referred to above have been either returned or deleted.

Article 15 – Notices

Unless specified otherwise, all notices provided for in the Agreement shall be valid when sent and received by electronic mail, the postmark date being the reception date. The e-mail addresses for such notices are specified in the Purchase Order. For this purpose vpod.tv provides the following e-mail address: sales@vpod.tv.

Article 16 – Applicable law and jurisdiction

1. Applicable law. The interpretation and application of the Agreement shall be construed and governed under the laws of France

2. Jurisdiction. The *Tribunal* of Paris shall have exclusive jurisdiction over any claim in relation to the Agreement, even in the event of multi-parties claim, or for the guarantee of a Party, or for conservative, urgent or interim measures.