



# TERMS & CONDITIONS

## 1. CHOICE OF SERVICE

1.1. You are solely responsible for assessing the suitability of your chosen Service for your needs, including checking the interoperability of the Service or any part of it with your systems or the systems of your other service providers. We may assist in the choice based on the information you communicate to us, but you acknowledge and agree that, subject to Clause 10, we will not be liable for any Loss arising from such assistance.

## 2. SALES ORDER FORM (SOF)

2.1. A description of the services we provide to you is contained in the Sales Order Form, along with our charges for those services and our payment terms. In signing the SOF (including by way of electronic signature technology made available by us) you confirm the description therein of services to be provided, you agree to pay the stated charges, and you agree to be bound by these terms and conditions and Schedules.

2.2. The SOF also states the Service Commencement Date (SCD). Normally this will be agreed in advance, but where this is not possible, we will append an SCD based on the actual date we make the service available to you and notify you in writing that we have done so.

2.3. The SOF also serves as a place for us to record your contact details. You agree to keep us informed of any changes to these details. We will use this information in accordance with our Privacy Notice as updated from time to time.

2.4. You agree to let us have all the information and assistance reasonably requested by us to enable us to provide the Service (and undertake that all information provided is correct), and to do so in a timely fashion to not impede our ability to meet any agreed SCD.

## 3. CHARGES AND PAYMENT

3.1. Our charges are as set out in the SOF and are payable at the times and in the manner set out therein.

3.2. The charges as set out in the SOF are exclusive of Value Added Tax (VAT) and any other applicable sales taxes or duties at the prevailing rate which will be payable by you in addition to and at the same time as the relevant charges.

3.3. If payment of any sums due under the Contract is not received in accordance with the terms set out in the SOF we reserve the right, at our discretion, to:

3.3.1. charge interest, at an annual rate of 4% above the base rate of Lloyds TSB or equivalent institution calculated on an annual basis on the outstanding sums, calculated from when the payment is due until the payment is received by us, and/or

3.3.2. charge on to you any fees or charges levied on us by our bank in respect of returned or refused payments, and/or charge a reinstatement/reconnection fee.

3.4. Without prejudice to our other rights and remedies under the Contract, if any sum payable is not paid within 30 days from receipt of our invoice, excluding delays in payment verifiably due to bank issues, we reserve the right, forthwith and at our reasonable discretion, to suspend the provision of Service to you.

3.5. Payments due shall be apportioned equally to each whole calendar month. The calendar month in which the SCD falls will be chargeable pro rata to the monthly charge.

3.6. We may, by no less than 30 days' notice prior to the expiry of the Term, in writing, vary the amount of the charges at the time of renewal.

## 4. TERMS AND RENEWAL

4.1. The Initial Term Commitment of the Contract is stated in the Sales Order Form. This is expressed as a number of calendar months. The first month is taken to be the period from the SCD until the end of the calendar month in which it falls (this ensures that billing periods and renewal dates align with calendar months, for mutual administrative benefit).

4.2. After expiry of the Initial Term Commitment, the term shall automatically be renewed for the same number of whole calendar months as stated in the Initial Term Commitment (the “Renewal Terms”) unless written notice is given not less than 90 days prior to the end of the Term. Where a notice of a change in charges (a “Charges Notice”), pursuant to Clause 3.6, is issued within 104 days prior to the end of the Term, you may by giving notice within 14 days of such Charges Notice, terminate the Contract effective at the end of the then current Term.

## 5. TERMINATION AND SUSPENSION

5.1. In addition to the right to give notice under Clause 4.2, either party may terminate the Contract:

- 5.1.1. forthwith upon notice in the event that either party has not remedied a breach within 30 days of a written request to do so by the other party (including failure to pay) or has committed a breach that is not capable of remedy, or
- 5.1.2. if either party pass a resolution, or a petition is presented, to wind up the company (otherwise than for a solvent reconstruction or amalgamation), or have a receiver appointed of the whole or any part of their assets, or are subject to any bankruptcy, insolvency, administration, sequestration or similar proceedings.

5.2. We may additionally terminate the Contract if you post any material on our servers that is considered critical of our services or you offer to resell any of our services in direct competition to us without reseller accreditation;

5.3. On termination of the Contract we shall be entitled immediately to deny access to any services previously provided. We will allow you to collect, at your own expense and for a period of 14 days after termination, any of your content located on our servers, or we will delete it immediately on your written instruction. After the 14 day period and in the absence of written instruction we shall be entitled to delete all such content. We shall further be entitled to post such notice in respect of the non availability of any services linked to our servers subject to your prior written approval (not to be unreasonably withheld or delayed) over the content of such post.

5.4. Suspension of Service due to *Force Majeure* in accordance with Clause 10.6 below, will not affect our right to terminate the Contract.

## 6. CONFIDENTIALITY AND PUBLICITY

6.1. Each party will treat in confidence the other's Confidential Information. Each party further agrees not to disclose the same to any other person or entity except:

6.1.1. to its own employees, agents and contractors under conditions of confidentiality and then only to the extent required for the proper performance of the Contract; or

6.1.2. to the extent required by law or any regulatory requirement or by any regulatory authority.

6.2. Upon termination of the Contract, each party shall ensure that all Confidential Information belonging to the other party (in whatever medium the same is recorded or held) is returned, deleted or destroyed in accordance with the other party's written instructions.

6.3. SharpStream reserves the right to anonymise and use statistical data gathered for whatever purpose it sees fit including its own publicity.

## 7. PERSONAL DATA

7.1. All Personal Data that we handle shall be managed in accordance with our Privacy Notice (link provided in section 20. Links to Related Documents) as updated from time to time.

7.2. Provision of certain Personal Data, as indicated in the SOF, is a contractual requirement of entering into the Contract, so that we may administer the Contract.

7.3. Where you use the Service to transmit, store or record content that contains Personal Data relating to others (e.g. where content of podcasts includes Personal Data) you are the data Controller and are responsible for ensuring that said use is in compliance with all applicable data protection legislation, including, provision of all necessary notices, and where necessary, obtaining all relevant consents.

7.4. In the limited circumstances set out in Clause 7.3, we act as Processor of the data and we shall:

7.4.1. process such Personal Data only on your written instructions unless we are required by the laws of any member of the European Union or by the laws of the European Union to process Personal Data (Applicable Data Processing Laws). Where we are relying on Applicable Data Processing Laws as the basis for processing Personal Data, we shall promptly notify you of this before performing the processing required by the Applicable Data Processing Laws unless those Applicable Data Processing Laws prohibit us from so notifying you;

7.4.2. ensure that all persons authorised to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

7.4.3. taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk;

7.4.4. assist you, at your cost, in responding to any request from a data subject and in ensuring compliance with your obligations under data protection legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

7.4.5. notify you without undue delay on becoming aware of a Personal Data breach;

7.4.6. at your written direction, delete or return Personal Data and copies thereof to you on termination of the Contract unless required by Applicable Data Processing Laws to store the Personal Data; and

7.4.7. maintain complete and accurate records to demonstrate our compliance with this Clause 7.

7.5. In the limited circumstances set out in clause 7.3, you, as Controller of the Personal Data, hereby provide a general authorisation to us to appoint third parties to process the Personal Data. The list of third parties used to process data that we manage is set out in our Privacy Notice as amended from time to time. We shall enter into a written agreement with each third-party processor incorporating terms which are substantially similar to those set out in this Clause 7. As between the you and us, we shall remain fully liable for all acts or omissions of any third-party processor appointed by us pursuant to this Clause 7.

7.6. You, as Controller of the Personal Data described in Clause 7.3, have a right to visit our premises, during normal business hours (Monday to Friday 9:00 to 17:00), at your own costs, for the sole purpose of inspecting our compliance with this Clause 7 in respect of such Personal Data (and not any other data), You must inform us in due time (at least four weeks in advance) of your intention to conduct checks. You are entitled to conduct one check per year.

## 8. SECURITY

8.1. You acknowledge and agree that it is your sole responsibility to:

8.1.1. validate the integrity of the data you receive or transmit using our services; and

8.1.2. establish and maintain appropriate procedures to protect the security of your service and usage, and to ensure the confidentiality of your passwords.

8.2. We shall take reasonable steps to preserve the physical and technical security and integrity of the Service. We recommend that you carefully review your security procedures in relation to your network and any confidential and/or valuable information passing over it.

## 9. LEGAL COMPLIANCE

9.1. All traffic routed across the Service must comply with any applicable laws in any territories that the stream can be received.

9.2. It is the responsibility of you as the customer to

9.2.1. ensure that all copyright laws in whichever territories you are streaming to are met, including having all necessary licences in place from persons who control any rights in your content; and

9.2.2. ensure that any government or regulatory licence, permission, registration or approval required in respect of your use of the Service is in place; and

9.2.3. ensure that your use of the Service is in accordance with the terms of any applicable licence, permission, registration or approval, whether governmental, regulatory, commercial or of whatsoever nature, including, without limitation, obligations to retain and deliver on request any recordings, logs, playlists, transcriptions, or other treatments of your media content, and you are responsible for checking the accuracy of any of the foregoing information that may be generated by the Service.

9.3. Your obligations under Clause 9.2 above shall include, where applicable and without limitation, clearance and/or consents in respect of your proposed domain name and merchant services agreements between you and the relevant banks in respect of your operation of an Online Store or Service.

9.4. Your obligations under Clause 9.2 above shall extend to the use of the Service to export, post or otherwise make available your content via any third party platform.

9.5. You agree to indemnify and keep indemnified and hold us on demand harmless from and against any claim brought against us by a third party resulting directly from your content distributed via our Service ("Claim"), and in respect of all Losses, costs, actions, proceedings, claims, damages, expenses (including reasonable legal costs and expenses), or liabilities,

directly incurred by us in consequence of your breach or non-observance of the Contract, including the Acceptable Use Policy, or any breach of applicable laws in connection with your use of the Service. provided that we promptly notify you of such Claim and permit you to conduct the defence and settlement of such Claim, subject that any such settlement shall be subject to our consent (not to be unreasonably withheld or delayed).

## 10. LIABILITY

10.1. We hereby warrant to you that we will use reasonable endeavours to ensure that the Service shall meet the description contained in the SOF.

10.2. Nothing in the Contract shall limit or exclude our liability for any loss suffered by you arising from our fraud or for death or personal injury caused by our negligence.

10.3. Subject to Clause 9.5 and Clause 10.2, neither party's total legal aggregate liability to the other for Loss during the term of the Contract will in any circumstances exceed the total sum payable under the contract for the year in which any loss or damage arises, whether such liability arises in contract, tort, negligence, misrepresentation, breach of statutory duty or otherwise, subject that this clause shall not act to reduce or expunge any charges for the Service.

10.4. Subject to Clause 10.2, we will not be liable to you or to any other person for any loss, costs, claims, damages or expenses arising from or in connection with any failure or delay by you to comply with your obligations in payment, or your obligation stated in Clause 6, Clause 8.1.2 and Clause 9.2.

10.5. Subject to Clause 10.2, we shall not be responsible for checking that the information or instructions provided by you are correct, and that the Service is therefore functioning as you intended (for example, regarding the placement of advertisement in your content, or the recording of your content).

10.6. Neither party shall be liable to each other for anything arising out of or in connection with continuation of the event of *Force Majeure*. In these terms, "*Force Majeure*" shall mean any cause preventing or delaying us from performing any or all of our obligations, which arises from or is attributable to acts, events, omissions or accidents beyond our reasonable control including (without limitation) acts of God, war, riot, civil commotion, terrorist act, explosion,

failure of any third party telecommunications provider, any third party provider of co-location services, acts of government, malicious damage, fire, flood or storm.

10.7. If either party is prevented or delayed in performing any of its obligations because of an event of *Force Majeure*, it shall notify the other party as soon as practicable specifying its nature and extent and shall use reasonable endeavours to mitigate the consequences of the same and to assist the other party in finding a solution to it by which the obligations under the Contract may be performed despite the continuation of the event of *Force Majeure*.

10.8. If either party is prevented by Force Majeure from the performance of its obligations under the Contract for a continuous period in excess of 14 days, either party may terminate the Contract forthwith by notice to the other in writing.

10.9. Subject to Clause 9.5, in no event shall one party be liable to the other party for any loss of business, revenue, goodwill, contracts, data, profits, wasted management or other time, or anticipated savings or for any other indirect, special or consequential or economic loss whatsoever.

10.10. We will maintain through reasonable endeavours an up-to-date database of appropriate IP address information in order to be able to restrict access to your media content, geographically by country, (“geo-locking”) where this service is specified on the SOF. We cannot, however, guarantee 100% non-availability in excluded territories, nor can we guarantee 100% availability in non-excluded territories. We aim to achieve 99% accuracy in both goals. Where you are aware of inconsistencies, you may notify us in writing of affected IP address(es). We shall take the necessary steps to include or exclude them from the filtering process as appropriate within 12 business hours from your notice. We can only take action in response to notices containing details of IP V4 addresses or address ranges (or such other technical requirements as we may advise from time to time). We accept no liability whatsoever for any consequences of incompleteness or inaccuracies in the data supplied by you.

10.11. Any statistical analysis of streaming log files (“Stats”) made available to you by us is supplied on the basis of our reasonable endeavours, and we can accept no responsibility for the availability, completeness or accuracy of the Stats. Stats and any underlying information are our Confidential Information and Stats are provided for your internal business use only, and must not be published without our consent.

## 11. ACCEPTABLE USE POLICY



11.1. You agree to abide by our Acceptable Use Policy (link provided in section 20. Links to Related Documents).

## 12. WHOLE AGREEMENT AND INTERPRETATION

12.1. The Contract represents the complete agreement between us relating to the Service and supersedes any other agreement or understanding, oral or written, including any of your standard conditions. Save to the extent repeated in the Contract any representations or undertakings by us, express or implied, are hereby withdrawn.

12.2. The Contract may be altered only by a subsequent written agreement signed by each of us.

12.3. Any indulgence or failure by either party to exercise a right under the Contract shall not be deemed to be a waiver of that party's rights.

12.4. If there is any conflict or inconsistency between the provisions of the AUP, these terms, and the Sales Order Form, then the provisions shall be construed in the foregoing order of precedence.

12.5. No person who is not a party to the Contract shall be entitled to rely upon it, whether under the Contracts (Rights of Third Parties) Act 1999, or otherwise.

## 13. ASSIGNMENT

13.1. You must not assign, transfer, charge or deal in any manner with the Contract or any rights under it, without our prior written consent (which shall not be unreasonably withheld or delayed) save that you may assign to an affiliate, subsidiary or parent company without our prior written consent, providing that you shall remain liable for the performance of your obligations under the Contract.

## 14. FAULT REPORTING AND RESOLUTION

14.1. We will respond to reports of suspected faults or technical service requests according to the the then-current Technical Support Policy (link provided in section 20. Links to Related Documents) and which may be updated by us from time to time at our discretion, provided that we shall not materially reduce the overall level of support provided.

14.2. We not handle calls from end-users of the Service supplied and may charge you for any such calls received.

14.3. The Contract does not extend to support for any faults that are a result of any failure of your systems to meet any pre-requisite standards or requirements as made available or communicated to you from time to time, or from any failure of or fault with your system, or any faults that are the result of using the Service other than as intended. We reserve the right to charge additional fees should we agree to provide support relating to such excluded faults.

## 15. SERVICE LEVEL AGREEMENT (SLA)

15.1. We warrant to provide availability of the Service for live, on-demand and podcasting and in the supply of access to the Internet from our Streaming Servers at a Service Level not less than 99.9% per month.

15.2. The SLA only applies in respect of the service specified in Clause 15.1, and does not apply to any other services provided by us, which are provided on the basis of reasonable endeavours.

15.3. We shall use the following method to determine Availability: by automatic monitoring and recording by our network management server of your inbound feed(s), and a ping command or equivalent to a recognised point on the edge of our network.

15.4. We shall use the following formula to calculate Availability:  $A = (X - Y) / (X - \text{Planned Outages}) \times 100$  Where: "A" the Availability of the service (expressed as a percentage, rounded up to two decimal places). "Y" Minutes of downtime in 1 calendar month "X" Total minutes in 1 calendar month based on 1 minute past midnight on the 1st to midnight on the last day of the month.

15.5. We shall undertake Planned Outages during a 'maintenance & upgrade window' between 22:00 and 06:00 London time, and shall post at least 24 hours advance notice on our Website as well as advising customers by email. Planned outages shall be less than 1 hour duration.

15.6. Non-Availability time shall also be excluded from the calculation where due to:

15.6.1. faults with any system, hardware, or software outside our control and not belonging to our immediate suppliers, or

15.6.2. faults which are brought about by your failure to comply with the Acceptable Use Policy, or

15.6.3. *Force Majeure* events as described in Clause 10.6.

15.7. If the availability of our services fails to meet the 99.9% uptime guarantee, then you'll be eligible to claim, as the sole and full remedy for failure to meet such guarantee, a refund of one day's service for every additional hour that your service is unavailable which will be added to the end of your current contract.

15.7.1. Please note: 99.9% uptime guarantee does not include:

15.7.1.1. Critical unscheduled maintenance.

15.7.1.2. Loss of service in the case of but not limited to natural disasters or periods of unpredictable weather causing damage to connections outside of our control.

15.7.1.3. Loss of service due to the failure of service provided by third party companies such as but not limited to Internet Service Providers and Domain Registrars.

15.8. You may only claim reimbursement against the elements in the Sales Order Form which are directly affected by loss of Availability as provided in Clause 15.1.

15.9. Any claims for reimbursement must be made through your Account Manager within 20 Business days of the end of the calendar month in which the qualifying outage occurred.

15.10. Validated claims will be credited to you at the earliest practical billing period opportunity.

15.11. You shall not be entitled to claim compensation for any loss of Availability during any period when your account is overdue.

## 16. ADVERTISING SERVICES

16.1. Dependent on the Services selected by you, we may facilitate the placement of advertising into your content, in which circumstances we will normally act as a facilitator only between you and your advertisers, advertising agency or partners. In such circumstances we act on your instruction only, and are not responsible for the payment of any monies due or for the content of any advertisement, it's appropriateness for placement in your content, or whether

the placements made are in accordance with any regulatory requirements or any commercial agreement you may have regarding such advertisements.

16.2 For customers below certain thresholds, we may act as your agent for the sale of advertising space in your content (Advertising Services), and where this applies:

16.2.1 we shall make these services clear in the SOF;

16.2.2 we shall set out in the SOF the relevant threshold of viewer hours which, should you exceed, we will be entitled to immediately cease providing Advertising Services to you, and such threshold is subject to amendment at any time by us communicating this to you;

16.2.3 we are able only to provide limited, pre-defined parameters to you to control the content of advertising placed in your content and we will not carry out any more detailed instructions provided by you outside of the pre-defined parameters;

16.2.4 we shall sell such advertising space via such partners and at such rates as we consider appropriate, at our discretion;

16.2.5 we shall be entitled to retain a commission for such Advertising Services, as set out in the SOF, and shall pass resulting monies from advertising, as received by us from our advertising partner, within 30 days of our receipt of monies from our advertising partner.

## 17. RESOLUTION OF DISPUTES AND GOVERNING LAW

17.1. Both parties agree that they shall, in good faith, use reasonable endeavours to resolve any dispute or disagreement arising out of or in connection with the Contract.

17.2. The Contract shall be exclusively governed by, and construed in accordance with English law. The parties submit to the exclusive jurisdiction of the English courts.

## 18. NOTICES

18.1. Notices under the Contract must be sent by hand or by pre-paid recorded delivery or registered post (or registered airmail, if applicable) or (with a hard copy confirmation sent that day by post) or by electronic mail, to the appropriate address set out in the Sales Order Form or such other address as the addressee may by written notice have directed.

18.2. A notice served under Clause 18.1 shall be deemed to have been received:

- 18.2.1. if delivered by hand, at the time of delivery; or
- 18.2.2. in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting; or
- 18.2.3. in the case of registered airmail, 5 Business Days from the date of posting; or
- 18.2.4. in the case of electronic mail, at the time of transmission.

## 19. DEFINITIONS AND INTERPRETATION

19.1. Throughout the Contract (including the attached Schedules), the following words and phrases shall have the following meanings:

- Acceptable Use Policy (AUP) means the SharpStream Acceptable Use Policy which describes the terms which you must adhere to for use of SharpStream services;
- Business Day means any day (other than a Saturday or Sunday) on which clearing banks are ordinarily open for business in the City of London;
- Business Hours are defined as 09:00 to 17:00 London time;
- Confidential Information means all information and materials (whether oral or recorded in any medium) which are marked confidential or which are by their nature clearly confidential obtained under or in connection with the Contract other than any information which: is already in the public domain otherwise than as a breach of the Contract; was rightfully in the possession of a party prior to the disclosure by the other party and acquired from sources other than the other party; or was obtained from a third party who was authorised to disclose such information;
- Contract means the agreement constituted by these terms, the AUP, and the Sales Order Form;
- Inbound Route means a connectivity path via which your content is provided by you to SharpStream;
- Loss means any damages, loss, costs, claims or expenses and including (without limitation) the cost of repairing or replacing any tangible property that suffers physical damage by reason of any act or omission and intangible property;
- Personal Data, Controller and Processor carry the meanings given to them in the General Data Protection Regulation ((EU) 2016/679);
- Support Centre: the facility operated by SharpStream, contactable at the phone number(s) and e-mail addresses supplied by SharpStream, for the purpose of supporting the service provided to you only – it does not support end users of the Service;
- Sales Order Form (SOF) means the order form setting out your detailed requirements for the Service completed and returned to us and signed by both parties (including by way of electronic signature technology made available by us);

- SharpStream means the company, SharpStream Ltd., whose normal place of business is 1 Trafalgar Court, Brighton, East Sussex, BN1 4FB and whose registered number in England is 6828317;
- Service means the provision of the goods and services as set out in the Sales Order Form (SOF); Service Commencement Date (SCD) is the date when SharpStream leaves the service tested and ready for your use;
- Streaming Server means the computer/server used in the provision of online delivery of video and/or audio as described in the Sales Order Form (SOF);
- We means the supplier, SharpStream Ltd. (and related expressions shall be construed accordingly);
- You means the customer, stated as the legal entity on the Sales Order Form (SOF) with whom the Contract is made (and related expressions shall be construed accordingly).

19.2. The headings of clauses and paragraphs in these terms are for ease of reference only and shall not be taken into account in the construction or interpretation of the clauses to which they refer.

19.3. Any reference in the Contract to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to such statute or statutory provision in force at the date of the Sales Order Form and as subsequently re-enacted or consolidated.

19.4. References in the Contract to either party's personnel shall include such party's directors, employees, agents and sub-contractors.

## 20. LINKS TO RELATED DOCUMENTS

Document	Link
Privacy Notice	<a href="https://www.sharp-stream.com/privacy">https://www.sharp-stream.com/privacy</a>
Acceptable Use Policy	<a href="https://www.sharp-stream.com/commercials">https://www.sharp-stream.com/commercials</a>
Technical Support Policy	<a href="https://www.sharp-stream.com/commercials">https://www.sharp-stream.com/commercials</a>