

## FASTPITCH STREAMING CONTENT CLIENT TERMS AND CONDITIONS

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These FastPitch Streaming Content Client Terms and Conditions (the "Agreement") will take effect on the earliest of (a) the placement of any Client Order with FastPitch, (b) Client's provision of any Source Content to FastPitch, or (c) Client's use of any Enabling Code or Streaming Content.

### 1. DEFINITIONS

The following terms will have the meanings specified below:

- 1.1. **"Agreement"** is defined in the preamble.
- 1.2. **"Client"** means any client of a Reseller for which any of the events specified in the preamble occurs.
- 1.3. **"Confidential Information"** is defined in Section 9.
- 1.4. **"Enabling Code"** means code that FastPitch provides by which Client may receive Streaming Content from FastPitch's servers over the Internet.
- 1.5. **"FastPitch"** means FastPitch Video Services LLC, a California limited liability company with its main office at 1295 Idylberry Road, San Rafael, CA 94903.
- 1.6. **"Order"** means an order for FastPitch services that Reseller submits to FastPitch and that FastPitch accepts.
- 1.7. **"Party"** means FastPitch or Client.
- 1.8. **"Payment Schedule"** means the milestones and corresponding payment amounts set forth in an Order Form.
- 1.9. **"Reseller"** means an entity that provides FastPitch services to its clients.
- 1.10. **"Source Content"** means content provided to FastPitch by Client (either directly or via a Reseller or another third party) in accordance with the applicable Order, or content created by FastPitch for Client pursuant to a professional services agreement.
- 1.11. **"Streaming Content"** means the combination of (a) content that FastPitch derives from Source Content and (b) FastPitch's proprietary computer code by which FastPitch delivers that content to Client, as applicable, in accordance with the applicable Order.
- 1.12. **"Term"** is defined in Section 5.1.

### 2. LICENSE GRANT AND RESTRICTIONS.

- 2.1. **License Grant.** During the Term and so long as Client is not in material breach of this Agreement, Client will have a non-exclusive, fully-paid, non-transferable, worldwide license to use Enabling Code and Streaming Content for Client's own business purposes.
- 2.2. **Restrictions.** Client will be responsible for the acts and omissions of any employee, agent, or contractor to which it allows access to Enabling Code. Client will not (a) use Enabling Code other than as allowed herein; (b) allow anyone other than Client's employees, agents, contractors, and clients to have access to Enabling Code; (c) make any modifications, enhancements, adaptations, or translations to or of Enabling Code, except for those resulting from normal usage thereof; (d) attempt to reverse engineer, disassemble, reverse translate, decompile, or in any other manner decode any Enabling Code or Streaming Content; or (e) attempt to access any Streaming Content or any other data on any FastPitch server by any means other than by using the applicable Enabling Code.

### 3. FULFILLMENT

- 3.1. **Provision of Source Content; Technical Specifications.** Client will provide or will arrange for provision of the Source Content specified on each Order. Client will ensure that Source Content does not (a) include any matter that will subject FastPitch to civil or criminal liability under any applicable law, ordinance, or government regulation or (b) otherwise violate FastPitch's terms of use set forth at <http://www.fastpitchweb.com/TermsOfUse.html> as may be revised by FastPitch from time to time. Client will ensure that its computers that will execute Enabling Code will comply with the technical specifications set forth at <http://www.fastpitchweb.com/TechnicalSpecifications.html> as may be revised by FastPitch from time to time.
- 3.2. **Development of Streaming Content and Provision of Enabling Code.** FastPitch will convert Source Content to Streaming Content in accordance with the specifications set forth in the applicable Order and will store the Streaming Content on FastPitch's servers. FastPitch will deliver to Client Enabling Code for the Streaming Content. FastPitch will provide the amount of server storage and transmission bandwidth specified in the applicable Order.

### 4. PAYMENTS

- 4.1. **Prices and Payment Terms.** Client will pay FastPitch the prices set forth in each Order on the payment terms set forth therein.
- 4.2. **Invoices.** FastPitch will submit one or more invoices in accordance with the Payment Schedule for the applicable Order. Each invoice date will be the date that the applicable milestone(s) was/were achieved, and the invoice amount will be the total amount(s) corresponding to the applicable milestone(s). Each invoice will specify the applicable payment due date(s).
- 4.3. **Taxes.** Client will pay, or will reimburse FastPitch for, all taxes (except for taxes on FastPitch's net income or where Client presents an exemption certificate acceptable to applicable taxing authorities) incurred hereunder.
- 4.4. **Late Payments and Collection Costs.** If FastPitch does not receive any payment by its due date, Client will pay to FastPitch a late payment fee equal to the lesser of one percent per month or the maximum amount permitted by law on all due and unpaid amounts. Acceptance of late or partial payments (even if marked "Paid In Full") or late payment fees will not waive any of FastPitch's rights to collect the full amount due hereunder. Client will reimburse FastPitch for all costs of collecting any past due accounts, including attorneys' fees.

### 5. TERM AND TERMINATION

- 5.1. **Term.** The term of this Agreement will begin on the Effective Date and will continue until terminated as specified herein (the "Term").
- 5.2. **Termination for Cause.** FastPitch may terminate this Agreement immediately without notice to Client if: (a) Client ceases to carry on its business; (b) Client materially breaches any material provision of this Agreement; (c) a receiver or similar officer is appointed for Client and is not discharged within 30 days; (d) Client becomes insolvent, admits in writing to its inability to pay debts as they mature, is adjudicated bankrupt, or makes assignment for the benefits of its creditors; or (e) any proceeding under bankruptcy or insolvency laws is commenced by or against Client and is not dismissed within 30 days.

### 6. DISCLAIMER OF WARRANTIES

FASTPITCH PROVIDES ALL SERVICES "AS IS" AND HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO ANY SERVICES PROVIDED HEREUNDER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

## 7. INTELLECTUAL PROPERTY AND INDEMNIFICATION

### 7.1. Intellectual Property.

- 7.1.1. **Client's Source Content.** Client will retain ownership of its Source Content. Client hereby grants to FastPitch a non-exclusive, perpetual, irrevocable, fully-paid, worldwide license to use, modify, and create derivative works of Client's Source Content for the purpose of performing FastPitch's obligations under this Agreement, including without limitation conversion of Source Content to a different format for inclusion in Streaming Content.
- 7.1.2. **FastPitch's Intellectual Property.** FastPitch will retain ownership of its intellectual property, including without limitation all Streaming Content and Enabling Code.
- 7.1.3. **No Unspecified Rights.** Neither Party will acquire any rights, implied or otherwise, in the intellectual property of the other, except as expressly specified in this Agreement.

7.2. **Indemnification by FastPitch.** FastPitch will defend or settle any third-party suit or proceeding brought against Client based upon a claim that any Enabling Code or Streaming Content (except to the extent that Streaming Content incorporates any Source Content or derivative work thereof) infringes any existing United States patent or copyright or misappropriates any trade secret, provided that FastPitch is notified promptly in writing and is given complete authority and information required for the defense. FastPitch, at its sole option, may procure for Client the right to continue to use the Enabling Code or Streaming Content or to modify it to become non-infringing. If FastPitch is not reasonably able to modify, or otherwise secure for Client the right to continue using, the Enabling Code or Streaming Content, FastPitch may terminate Client's right to use same and upon termination will refund to Client the remaining undepreciated or unamortized value of same on Clients' books, as applicable, for U.S. federal income tax purposes, but in no event more than the amount actually received by FastPitch for same.

7.3. **Indemnification by Client.** Client will defend, indemnify and hold harmless FastPitch against all claims, damages, losses, costs, expenses, obligations, liabilities, actions and suits by third parties, including without limitation attorneys' fees and settlement amounts associated therewith, that may be asserted against FastPitch that arise out of, relate to, or are a result of:

- 7.3.1. Breach of any agreement, covenant or obligation of Client to any third party;
- 7.3.2. Breach of any warranty or representation made by, or any obligation or covenant of, Client hereunder; or
- 7.3.3. Any claim that any Source Content infringes or misappropriates any intellectual property right of any third party.

7.4. **Entire Liability.** The foregoing provisions of this Section 7 state the entire liability and obligations of the Parties to each other, and their exclusive remedies against each other, for claims by third parties.

## 8. LIMITATIONS OF LIABILITY AND DAMAGES

8.1. **EXCEPT FOR OBLIGATIONS UNDER SECTION 7, IN NO EVENT WILL FASTPITCH'S AGGREGATE LIABILITY OR DAMAGES ARISING OUT OF THIS AGREEMENT OR ITS TERMINATION EXCEED THE TOTAL OF ALL AMOUNTS PAID OR PAYABLE TO FASTPITCH BY CLIENT HEREUNDER. THIS LIABILITY LIMIT IS CUMULATIVE AND NOT PER INCIDENT.**

8.2. **EXCEPT FOR OBLIGATIONS UNDER SECTION 7, IN NO EVENT WILL FASTPITCH HAVE ANY LIABILITY TO CLIENT FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED OR ON ANY THEORY OF LIABILITY, ARISING OUT OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS, EVEN IF FASTPITCH HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.**

8.3. **THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE ARISING FROM ANY SUCH LIMITATION.**

**9. CONFIDENTIAL INFORMATION**

Client acknowledges that all non-public information about or owned by FastPitch (“Confidential Information”) is secret and confidential property of FastPitch. Client will hold FastPitch’s Confidential Information in a confidential capacity and will not, without the prior written consent of FastPitch, disclose it to any person or entity excepting Client’s personnel who are required to utilize the Confidential Information in connection with performance of obligations under this Agreement and who are bound by confidentiality obligations at least as stringent as those set forth in this Section 9.

**10. GENERAL PROVISIONS**

- 10.1. **Governing Law and Jurisdiction.** This Agreement will be governed by the laws of the State of California without regard to its conflict of laws principles. The Parties consent to the exclusive jurisdiction of the state and federal courts located in the County of Santa Clara, California and expressly waive any objection or defense based on lack of personal jurisdiction or venue in connection with any dispute arising out of or relating to this Agreement or its breach.
- 10.2. **Injunctive Relief.** The Parties acknowledge that breach of Section 2 or 9 may give rise to irreparable injury for which damages are not adequate compensation. Accordingly, FastPitch may seek, without obligation to post any bond, injunctive relief against the breach or threat thereof by Client in addition to any other legal and equitable remedies.
- 10.3. **Headings.** Headings are for reference only and will not affect the meaning or interpretation of this Agreement.
- 10.4. **Severability.** If any provision in this Agreement is found invalid or unenforceable, then the meaning of the provision will be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save the provision, it will be severed from the remainder of this Agreement, which will remain in full force and effect.
- 10.5. **Modification.** FastPitch may modify this Agreement from time to time by posting the modified version on FastPitch’s website.
- 10.6. **FastPitch as Beneficiary.** Client enters into this Agreement expressly for the benefit of FastPitch.
- 10.7. **Waiver.** The failure of FastPitch to enforce or require Client’s performance of any provision of this Agreement will not constitute a waiver of the provision, or affect the right of FastPitch to enforce the provision, or constitute a waiver of any future obligation to comply with the provision.
- 10.8. **No Assignment.** Client may not assign this Agreement or any of its rights or obligations hereunder.
- 10.9. **Force Majeure.** No default, delay or failure to perform on the part of FastPitch will be considered a breach of this Agreement if the default, delay, or failure to perform is due to causes beyond FastPitch’s reasonable control, including, but not limited to, causes such as Internet failures or delays, strikes, lockouts or other labor disputes, riots, civil disturbances, actions or inactions of governmental authorities or suppliers, epidemics, war, embargos, severe weather, fire, earthquakes, acts of God or public enemy, nuclear disasters, or default of a common carrier.
- 10.10. **Survival.** Sections 1, 2.2, and 4 through 10 will survive any expiration or termination of this Agreement.
- 10.11. **Entire Agreement.** This Agreement contains the entire understanding of the Parties and there are no commitments, agreements, or understandings between the Parties other than those expressly set forth herein.