Terms of Use

Effective date: May, 23 2022

Welcome to Flussonic LLC ("Company", "we", "us" or "our"), a technology company specializing in software for transcoding, delivery and storage of streaming video.

These Terms of Use ("Terms") apply to all users and others who download, install, register with, access or use ("you") our software ("Software").

These Terms are a binding contract between you and us. By accepting these Terms you are accepting and agreeing to these Terms on behalf of yourself or the entity or another person that you represent in connection with the use of Software. If you accept these Terms on behalf of another person or entity, you represent that you are authorized to accept these Terms on that person or entity behalf.

You do not have the right to use Software and cannot accept the Terms if you have not reached the age established by law when you have the right to conclude a legally binding contract with the Company, or you are the person who in accordance with the legislation of any state, including the state where you are a resident or from whose territory you use Software, is prohibited using such Software.

So using Software you represent and warrant that you have the full power and authority to enter into this contract.

Your use of Software confirm your acceptance of these Terms. If you do not agree to these Terms, you are not allowed to use Software. The Company has the right to make changes to these Terms from time to time, which come into force from the moment of their publication. You are expected to check our Terms regularly so you are aware of any change as they are binding on you. Continued use of Software means use under the amended Terms. If you do not agree with the Terms at any time, you must stop using Software. You agree that the Company has the right to send notifications, including notifications of changes to the Terms, by e-mail.

The edition of Terms comes into force from the moment of publication on the official website of the Company and is valid until it is replaced with an updated edition.

1. Definitions

Software is a computer program and its modifications, consisting mainly of a video streaming software platform and including all written information, documentation and materials provided to you by the Company in relation to the program and the owner of the exclusive rights to which is the Company.

The Software is the result of intellectual activity and the subject of copyright and is protected under both United States and foreign laws.

The algorithms of the Software and its source codes are a trade secret of the Company.
The Company may make changes to the Software at its own discretion.

**Software updates** means updates, corrections, modifications, bug fixes, improvements to the Software.

**Order form** – any order, paid by you according to the Rate.

**Intellectual Property Rights** means all: (a) copyrights, (b) moral rights, (c) rights associated with works of authorship, (d) trademark rights, (e) trade name rights, (f) trade secret rights, (g) patent and industrial property rights (whether registered or not), and (h) other proprietary rights. Intellectual property are owned by us or licensed to us and are protected under both United States and foreign laws. Except as explicitly stated in these Terms, we and our licensors reserve all rights in and to Intellectual Property.

**Subscription fee (subscription)** is a license fee, a fee charged by the Company for granting the exclusive renewable right to use the Software and updates to the Software according to the instructions in the Order Form and the Rate, for a certain period, in the form of a lump sum payment for the fact of granting the corresponding rights.

You can refuse from the subscription at any time by notifying the Company no later than 30 calendar days in advance.

**One-time license fee** is a one-time fee charged by you for the fact of granting a non-exclusive right to use the Software to the Licensee during the term of the exclusive right to the Software in the form of a one-time payment for the fact of granting the relevant rights regardless of the period of their actual use of the Software by the Licensee, subject to compliance by the Licensee the terms of this License Agreement.

**Rate** – the amount of the license fee for the right to use the Software, for a certain period. Rates are provided in your personal Account.

**Billing data** is data (or a combination thereof) that characterizes the amount of functionality of the Software used and the quality of the session; and that does not directly identify you or the content.

**Statistical data** – data on the procedure for your use of the Software. We collect, process and store statistical data on your usage of the Software during and after the usage. It is not possible to disable the collection of statistical data.

**Retroview service** is a service that, with your permission, is carried out by the Company, which collects, structures, stores and demonstrates to you statistical data about the sessions held (such as geography, volume, duration, etc.). All data is available in your personal Account.

By default, the Company processes (collects, stores and analyzes) statistical data on how you use the Software within the framework of the retroview service, during and after using the Software. Such statistics include information on the provision, use and performance of various aspects of the Software and related systems and technologies. At your request, the Company can disable the collection of statistical data.
2. Account

2.1. It is require you to register an account with us (“Account”). By creating an Account, you agree to: (i) provide accurate and current information for your Account, (ii) maintain and promptly update, as necessary, your Account information, (iii) immediately notify the Company if you discover or otherwise suspect password is lost, stolen, disclosed to an unauthorized third party. You are entirely responsible for maintaining the confidentiality of your Account login information and for all activities that occur in your Account, regardless of whether the third party performing such actions. You are liable for losses or damage incurred by the Company or other persons as a result of any unauthorized use of your Account.

2.2. You agree that Account is associated with you by the e-mail address to which the license key is linked and on the basis of which your access to the Software, rates, fees, and up-to-date information is carried out.

3. Privacy

Please refer to our Privacy Policy for information about how we collect, use and disclose information about you when you use the Software. You acknowledge and agree that your use of the Software is subject to our Privacy Policy.

4. Grant of limited license; copyright and trademark

4.1. You are hereby granted a limited, nonexclusive, nontransferable, nonsublicensable, revocable license (License) to use the Software, during Terms. You may not grant any sub-licenses (or transfer, lease or otherwise distribute) of the License to any party without the prior written consent of the Company.

4.2. As part of the License, you has the right to reproduce (install) the Software on your computer, launch, further use in accordance with its functional purpose. You has the right to use an instance of Software only within the limits of those rights and in the ways provided for herein in Terms and according to the Rate chosen by you.

4.3. License is granted for the Software as a whole and is not granted for individual components in the Software, for example, software algorithms and its source codes.

4.4. Except as expressly provided in these Terms or expressly permitted by applicable law, License does not include any right to a) reproduce, translate, enhance, rearrange, modify the Software, copy, decompile, decipher, disassemble, reverse engineer any aspect of Software, do anything that might discover the source code or algorithms related to the Software; b) decipher, create derivatives of the Software or any part thereof, use the Software or any part thereof to develop any product, including a product that is substantially similar or competitive with the Software d) bypass or disable any protective or technological functions of the Software.

4.5. If you modify the Software, then all rights and interests in respect of such modification will belong to the Company.

4.6. You may not use the Software as a part of a complex object.
4.7. You may not use the Software: i) in order to get or demonstrate any pornographic or any unlawful materials; ii) in any manner that could damage, disable, overburden or impair the functioning of Software; iii) for any illegal or unauthorized purpose.

4.8. You may not decrypt, create materials (products) derived from the Software or any part thereof, use the Software or any part thereof to develop any product, including a product that is substantially similar or competitive with the Software.

4.9. The Software and all Intellectual property expressed in the Software remain the exclusive property of the Company, and with the exception of the granted right to use the Software, no rights are granted to you, including the rights to use trademarks and service marks of the Company.

4.10. The Company owns all exclusive rights in respect of any improvements to Software or any new programs, updates, modifications or improvements to it, even if such improvements are the result of requests and comments from you.

4.11. You are granted the License to use Software throughout the world.

4.12. The period you are granted to use Software depends on the Rate, which you have chosen and may be the following:

   • for the Rate on the basis of a one-time license fee – for the full term of the exclusive copyright to Software, starting from the date of granting the rights to use Software;
   • for the Rate on the basis of a subscription fee (subscription) – for the entire period ordered and paid by you.

4.13. The Company may, but is not obliged to provide you with a trial account; the Terms apply to Software using during such a period of using the trial account.

4.14. In order to use Software you should provide permanent Internet access by your own efforts and means and the availability of the hardware and software necessary for the operation of the Software, as well as to carry out all integration work on the interaction of the Software with the equipment you use, the operating system, the server, audio/video signal sources, other software developed by third parties and standing on the same server with the Software.

4.15. After payment in accordance with the Rate which you have chosen: i) you receive a link in your Account to download an instance of the Software (within 3 days from the date of receipt of the license fee) ii) a license key is automatically generated in your Account, with which you have the opportunity to use the Software.

5. Warranty and Representations

5.1. You represent, warrant and agree that: i) you will not use the Software other than as expressly provided in these Terms; ii) you will not challenge any right, title or interest of the Company; iii) you will not remove, alter or conceal any copyright, trademark, service mark or other Intellectual Property rights notices incorporated in or accompanying the Software iv) you will use the Software in compliance with all applicable laws iv) you will
not bypass or circumvent measures employed to prevent or limit your access to the Software or gain unauthorized access.

5.2. Otherwise the Company has the right to limit, terminate or suspend your use of Software, with or without prior notice (possibly by e-mail) and without any liability. At the discretion of the Company, the resumption of access to the Software can be made after your elimination of the violation(s), including the settlement of the complaints and claims of third parties.

5.3. In these case (limitation or termination or suspension) all fees paid by you before are not refunded and are considered as a fine due to your misconduct, and you agree with that.

6. Technical support

6.1. The company provides Technical support for the Software, including issues related to the functionality, features of the installation and operation of the Software.

6.2. For technical support, you can contact by e-mail support@flusasonic.com.

6.3. Technical support is provided based on license key.

6.4. Technical support services does not include support for any third-party hardware or third-party software.

6.5. You have the right to contact the Technical support service within the period specified in clause 6.6., but not more than the number of hours calculated at the rate of 10 hours per year. The number of hours is calculated by Technical support staff based on the time spent by Technical support staff to form a response to your request. The cost of Technical support is included in fees, since it is not a separately provided service, but ensures that you use the Software.

6.6. Updates and Technical support are available during the period: - within one year, from the date of acquisition of the rights to use the Software on the basis of a one-time license fee. At the end of the initial year of use, you may, at your discretion, purchase additional access to Technical support and access to Updates; the fee will supplement the fee for a one-time perpetual (for the entire duration of the exclusive rights) license. If you do not purchase additional access to Technical support and access to Updates at the end of the initial support year, you can subsequently purchase them at any time after paying the fee for such a support extension period and paying for reactivation. - during the entire paid period of use of the Software, in case of acquisition of rights to use the Software on the basis of a subscription fee (subscription).

7. Payment terms.

7.1. You agree to pay all Fees in advance, promptly when due as described in the Order Form, in accordance with the following:

a. In the case of a Subscription, Fees will be billed periodically, as set out in the Order Form, based on a subscription model, on the first day of the month, quarter, or year (as applicable), and are due on the first day of each month, quarter, or year, during the Term, unless otherwise expressly agreed by the parties, by using PayPal, or Stripe, or Paddle or by debiting from the means of payment (your bank
card) as recurrent payments after you successfully make the first payment, or by bank transfer; b. In the case of a One Time Perpetual License, You will pay a one-time license Fee, for the License, upon execution of an Order Form, by using PayPal, or Stripe, or Paddle or by debiting from the means of payment (your bank card) or by bank transfer; c. To the extent that Fees are billed and paid through a third party credit card processor, such third party’s standard terms and conditions shall apply; d. All outstanding amounts owing under this Agreement will incur interest at a rate of 1.5 percent per month (or if such interest rate is not permitted by applicable law, then the maximum interest rate permitted by applicable law), commencing on the due date, calculated monthly, until such time as they are paid in full; e. You are solely responsible for payment of any goods and services taxes, sales taxes, value added taxes, and excise taxes, as applicable (but excluding any taxes attributable to the Company income), resulting from your use of the Licensed Software; f. All expenses related to the transfer of funds using payment systems and services, including, but not limited to, fees and commissions of these systems, taxes, etc., are paid by you at your own expense; g. In the case of a Subscription, the Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Term or then current renewal term, upon thirty (30) days prior notice to You (which may be sent by email).

7.2. The license fee is paid in U. S. dollars through the use of the PayPal system, or Stripe system, or Paddle system, or by bank transfer or by debiting from a means of payment (your bank card) as recurrent payments after the successful implementation of the first payment on the basis of an invoice generated using the Company's technical means. At the same time, the payment obligation is considered fulfilled at the time you received a payment receipt from PayPal, or Paddle or Stripe or transfer the payment to the Company's current account.

7.3. You agree that a single payment of the subscription fee is the basis for further debiting of funds by the Company from your means of payment (your bank card) in a non-acceptance manner until the moment of your written refusal to continue using the program.

7.4. You agree that if there are no funds on your bank card to extend the use of the Software according to the selected Rate, the Company has the right to make 3 more attempts to contact your means of payment for debiting the missing subscription fee.

7.5. In the absence of funds on the means of payment, the Company restricts your right to use the Software until the payment is received.

7.6. The amounts and terms of debiting a one-time license fee or subscription fee are provided in the Account.

7.7. The fact of a one-time payment means that you are familiar with the terms and conditions of payment of the license fee according to the Rate you have chosen.

7.8. If you do not use the Software due to lack of necessity, inability to use it for technical or other reasons, the license fees will not be refunded, and the Company is considered to have
fulfilled its obligations properly by providing access to the use of the Software (or related services).

7.9. If, within 5 (five) calendar days from the end of the paid period, the Company has not received any claims from you related to the scope of the rights granted, it is considered that the Company has fulfilled its obligations in full in full properly.

8. Limitation of liability

8.1. The Company will not be liable to you under any theory of liability — whether based in contract, tort, negligence, strict liability, warranty, or otherwise — for any indirect, consequential, exemplary, incidental, punitive or special damages or lost profits, even if you have been advised of the possibility of such damages.

8.2. The total liability of the Company, for any claim arising out of or relating to these Terms, is limited to the amount paid, by you under these Terms. In no event will the Company’s total liability arising out of or in connection with these Terms or from the use of or inability to use Software exceed the amounts you have paid under these Terms. The exclusion and limitations of damages set forth above are fundamental elements of the basis of the bargain between the Company and you.

8.3. The limitations set forth will not limit or exclude liability for the gross negligence, fraud or intentional misconduct of the Company or for any other matters in which liability cannot be excluded or limited under applicable law. Additionally, some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.

8.4. The Software is provided to you “as is” in accordance with the principle generally accepted in international practice. This means that the Company is not responsible for the problems that arise during the installation, updating, maintenance and operation of the Software (including compatibility problems with other software products, problems arising from non-compliance of the results of using the program with your expectations, etc.). You acknowledge and agree that you are solely responsible for possible negative consequences caused by incompatibility or conflicts of the Software with other software products installed on your computer.

8.5. The Company, taking all reasonable measures to ensure the quality and continuity of the Software performance, does not guarantee that the Software will work smoothly or error-free, as well as the absence of errors in the Software and the absolute protection of the Software from unauthorized access and exposure to malware. The Company is not responsible for delays or interruptions in the operation of the Software, its temporary inactivity (unavailability), as well as for the termination of its operation. In addition, the Company has the right to carry out emergency work on the license server as needed.

8.6. The Parties are released from liability for partial or complete non-fulfillment of obligations under these Terms if this non-fulfillment was the result of force majeure circumstances, or if the non-fulfillment of obligations by the Parties was the result of extraordinary events that the Parties could neither foresee nor prevent by reasonable
measures. Force majeure circumstances include events that a Party cannot influence and for the occurrence of which it is not responsible, including: war, uprising, strike, earthquake, flood, other natural disasters, fire, energy saving failures that occurred through no fault of the Parties, actions and acts of authorities and other unforeseen circumstances and events beyond the control of the Parties.

9. Indemnification

9.1. To the fullest extent permitted by applicable law, you will indemnify, defend, and hold harmless us and each of our respective officers, directors, agents, partners and employees (“Company Parties”) from and against any loss, liability, claim, demand, damages, expenses or costs (“Claims”) arising out of or related to (i) your use of Software; (ii) your violation of these Terms; (iii) your violation, misappropriation or infringement of any rights of another (including intellectual property rights or privacy rights). You agree to promptly notify the Company Parties of any third party Claims, cooperate with the Company Parties in defending such Claims and pay all fees, costs and expenses associated with defending such Claims (including, but not limited to, attorneys’ fees). You also agree that the Company Parties will have control of the defense or settlement of any third party Claims. This indemnity is in addition to, and not in lieu of, any other indemnities set forth in these Terms between you and us or the other Company Parties.

10. Release

To the fullest extent permitted by applicable law, you release the Company and Company Parties from responsibility, liability, claims, demands, and/or damages (actual and consequential) of every kind and nature, known and unknown (including, but not limited to, claims of negligence), arising out of or related to disputes between you and the acts or omissions of third parties.

11. Jurisdiction and Venue

You agree that these Terms is governed by the laws in effect in the State of Florida and that the sole and exclusive venue for any dispute arising hereunder shall be the courts located in and for Miami-Dade Country, Florida; provided, however, the Company may bring any action to obtain injunctive or other equitable relief with respect to any suspected, threatened or actual breach of this Terms in any court having jurisdiction over such matter. If any legal action or other proceeding is brought for the enforcement of these Terms, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties will be entitled to recover reasonable attorney’s fees, court costs and all out of pocket expenses even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

12. Notices and Contacts
12.1. By using Software, you agree to receive communications notices from us, including via email.

12.2. Also we welcome any feedback from you, comments, suggestions, ideas or any information you submit about us or Software. Your feedback is non-confidential and will become our sole property. We will own exclusive rights, including, without limitation, all intellectual property rights, in and to your feedback and will be entitled to the unrestricted use and dissemination of your feedback for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

12.3. If you have any questions, complaints or claims with respect to these Terms or Flussonic LLC, please contact us via email: info@flussonic.com.

13. Miscellaneous

These Terms constitute the entire agreement between you and us relating to Flussonic LLC and your usage of the Software. The failure of us to exercise or enforce any right or provision of these Terms will not operate as a waiver of such right or provision. The waiver of such right or provision will be effective only if in writing and signed by a duly authorized representative of the Company. If any provision of these Terms is held invalid and unenforceable, that provision will be enforceable to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

If you have any questions about these Terms, please contact us (see the Section Notices and Contacts).