

# TERMS AND CONDITIONS OF USE FOR PODIMO STUDIO

*Effective August 21 2020*

## **1. Introduction**

Hi and welcome to Podimo Studio! Please take your time to read these Terms and Conditions of Use for Podimo Studio ("Podimo Podcaster Terms") and any other Podimo terms referred to herein, so you are familiar with, what you can expect from Podimo, and what Podimo expects from you.

Podimo app is an open podcast platform dedicated to podcasts, podcast listeners and podcasters. At Podimo Studio registered podcasters can see the revenue their shows are generating, number of listeners, which episodes perform particularly well, and more. This gives podcasters insight into how to optimize the content to increase listenership, discoverability, and income.

Here is the simplified overview of these Podimo Podcaster Terms:

- Agreement between you and Podimo
- How to access Podimo Studio
- How to behave well at Podimo Studio
- Proper content – what's OK and what's not?
- If you misbehave
- Rights we grant to each other
- You want to share your ideas or feedback with Podimo
- Other legal stuff

## **2. Agreement**

Podimo Podcaster Terms is a legally binding agreement between you as an individual or the entity you represent ("you") and Podimo ApS, a Danish company with business registration number 40447024 and located at Gammel Strand 26, 1202 Copenhagen K, Denmark ("Podimo" or "we"). You acknowledge to have accepted these Podimo Podcaster Terms by selecting the relevant checkbox and clicking "Sign up" or "Confirm" button at Podimo Studio, or submitting your content to Podimo Studio, or otherwise accessing or using Podimo Studio. For the avoidance of doubt, your request to remove podcasts imported from an open RSS feed without creating an account at Podimo Studio does not qualify as acceptance of these Podimo Podcaster Terms.

Podimo Podcaster Terms contain reference to other terms and conditions of Podimo, including Podimo's Privacy Policy, which together with these Podimo Podcaster Terms and Exclusive or Non-exclusive Podcast Distribution Agreement(s), depending on whether you claim or create podcasts or both, constitute the complex of agreements between Podimo and you. In case of conflict between terms of these Podimo Podcaster Terms and Exclusive or Non-exclusive Podcast Distribution Agreement(s), the terms of respectively Exclusive or Non-exclusive Podcast Distribution Agreement(s) shall prevail as regards the relationship between Podimo and you, while these Podimo Podcaster Terms shall prevail for issues merely relating to your use of Podimo Studio.

## Changes

Please note that these Podimo Podcaster Terms – and other Podimo terms – can be changed from time to time to address changes in Podimo Studio set-up or functionality, legal requirements or for any other reasons at Podimo's sole discretion. The current version of these Podimo Podcaster Terms will be applicable for your use of Podimo Studio, so we want you to stay updated on the content of the terms by visiting this page from time to time. You will see the date for the latest update on the top of these Podimo Podcaster Terms. In case of substantial changes, we will notify you at your profile page on Podimo Studio or by e-mail. Should you disagree with any of the changes, please terminate your account as described in section 13. Your continued use of Podimo Studio will constitute an acceptance of the revised version of these Podimo Podcaster Terms.

### **3. You, your access and your account**

#### You

Access to Podimo Studio is only available to registered users, who are at least 18 years old and have legal capacity to enter into a binding agreement with Podimo, and previously have not been banned from accessing Podimo Studio. If you represent a legal entity, you certify that you are entitled by such a legal entity to conclude these Podimo Podcaster Terms as the legal entity you represent.

#### Access to your account

You create your account by signing up, providing the requested information, such as for instance your name, e-mail address and country, and accepting these Podimo Podcaster Terms and Podimo's Privacy Policy. You will be asked to verify your sign up by clicking on a link sent to the e-mail address provided by you to complete the sign up.

Upon completed sign up, you will gain access to your account at Podimo Studio ("Your Account"), where you will be able to enter your bank account details, access your existing podcasts, upload new podcasts, artworks and images, see listening statistics and revenue share information, share your podcasts to social media platforms and more.

Please make sure that the information you have provided at Your Account is correct and up to date. Also, please protect confidentiality of your username and password, as you are fully responsible for all activity related to Your Account, regardless of whether it was initiated by you or anyone else with an access to Your Account. Should you experience or suspect any unauthorized use of Your Account, please immediately change your password and contact Podimo, if necessary.

#### Changes to Your Account

You can close Your Account at any time as described in section 13 below.

We reserve the right to modify the content of Your Account in order to ensure correct information, fulfill legal requirements, avoid multiple accounts or duplication of podcasts or for any another reason, as deemed necessary at our sole discretion. We can also disable or reassign specific usernames and suspend or terminate Your Account, as further specified in section 6 below.

#### **4. Your use of Podimo Studio**

We are sure you know how to behave well on a digital platform, but for the sake of good order we have outlined the main set of rules all users of Podimo Studio have to comply with.

When using Podimo Studio you acknowledge that any of the following activities is strictly forbidden:

- 1) Using any technical features, programs or services to misrepresent the popularity of your podcasts – both as regards number of listeners and length of listened podcasts – or encouraging others to do the same. This includes use of bots, botnets, scripts, apps, plugins, extensions or other automated or non-automated means;
- 2) Copying, ripping, capturing, making publicly available, distributing, sharing, altering, removing, deleting or otherwise exploiting – or attempting to do so – any content at Podimo service other than Your Content;
- 3) Removing or amending any trademark, copyright or other proprietary or legal notices appearing at Podimo service or changing any indications of the ownership or source of any content, except from your own content;
- 4) Using Podimo Studio to upload and/or store files without having a legal right to do so;
- 5) Circumventing any territorial restrictions, technical or security measures applied by Podimo, its licensors or any third party;
- 6) Modifying, reverse-engineering, disassembling or decompiling Podimo Studio, Podimo service or any content other than Your Content, or creating derivative works based on the same, unless expressly permitted by applicable law;
- 7) Selling, renting, sub-licensing, leasing or transferring Your Account, or your access to Podimo Studio or any content at Podimo Studio without Podimo's prior written approval;
- 8) Collecting any personal data of your listeners, followers or other users through spidering or any form of scraping, other than data provided to you by Podimo, if any;
- 9) Deliberately impersonating any person or entity or otherwise misrepresenting your affiliation with a person or entity, for instance, by creating an account in the name of another person or company or accessing another person's account without its explicit consent or attempting to do so; or
- 10) Taking any action with a purpose of testing the vulnerability of Podimo Studio or any other Podimo service, interfering with Podimo service by any means including but not limited to hacking Podimo's servers or systems, submitting a virus, overloading, mail-bombing or crashing.

You agree to always comply with the above mentioned requirements when using Podimo Studio or any Podimo service and acknowledge that Podimo has the right to take any relevant measures as specified in section 6 to address any violations.

#### **5. Your content**

At Podimo Studio you have a possibility to submit relevant podcast information, including title(s), pictures, graphics, photos and artwork and to upload relevant podcasts. Podimo Studio supports the majority of common image file formats and any audio file format belonging to FFmpeg family. Please bear in mind that such data and content – other than Your Account info – will be visible to the users of Podimo service.

All text, pictures, graphics, photos, artwork, audio and any other content, data or information that you submit, upload, store, transmit, or make available at Podimo Studio ("Your Content") is your sole responsibility. This also applies when you claim a podcast available on an open RSS feed, which has been synchronized to the Podimo service.

We respect our podcasters, listeners and any third party rights. We expect you to do the same at Podimo Studio.

While we encourage creativity and freedom of speech, it is highly important that you do not submit any content, create and/or use a username or engage in any activity, which is or contains any of the following:

- 1) Illegal or intended to promote or commit an illegal act of any kind, including but not limited to violations of intellectual property rights, privacy or proprietary rights of a third party or Podimo, constitute a criminal offense, give rise to civil liability or otherwise violate any applicable laws or regulations;
- 2) Libellous, abusive, defamatory, offensive, pornographic or obscene, that promotes or incites violence or hatred based on race, gender, ethnicity, cultural identity, religious beliefs, disability or sexual orientation, or is otherwise objectionable at Podimo's sole discretion;
- 3) Violates any agreement to which you are a party, including but not limited to an exclusive podcast distribution agreement;
- 4) Contains confidential or proprietary information of a third party;
- 5) Impersonates or misrepresents your affiliation with another person, legal entity or user of Podimo Studio, or is otherwise false, fraudulent, deceptive or misleading;
- 6) Contains any virus, malware, Trojan horse, spyware, adware, bot, time bomb, worm or other harmful or malicious component, which might overburden, impair or disrupt Podimo service or interferes with any user's access to Podimo Studio or Podimo service; or
- 7) Violates these Podimo Podcaster Terms and/or any other of your agreements with Podimo in any other way.

Podimo has no obligation to review and/or monitor the content created or uploaded by users of Podimo Studio but reserves the right to do so at Podimo's sole discretion.

## **6. Consequences of non-conformity**

Should you – against expectations – fail to comply with any of the above stated requirements for your use of Podimo Studio or Your Content or any other terms of these Podimo Podcaster Terms, Podimo reserves the right to immediately terminate or suspend Your Account, to remove non-conforming content from Your Account or to restrict access to such content or Your Account at Podimo's sole

discretion. The same applies in case of your violation of applicable laws or regulations or your infringement of any third party rights, as deemed necessary at our discretion.

Furthermore, Podimo is entitled to remove, disable, cancel or reassign your username for any reason at Podimo's sole discretion.

Podimo reserves the right to investigate any non-conformity with these Podimo Podcaster Terms and to report any violation to appropriate law enforcement authorities, if found necessary by Podimo at its sole discretion, or to take any other legal action as found appropriate by Podimo.

By accepting these Podimo Podcaster Terms you acknowledge and agree to the above mentioned remedies and/or actions Podimo may take without any liability to you.

Podimo's lack of action against a specific non-conformity does not constitute a waiver to these Podimo Podcaster Terms and does not affect Podimo's ability to enforce these Podimo Podcaster Terms in future. Nor does any single or partial exercise of relevant measure(s) preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

## **7. Intellectual property and grant of rights**

Podimo Studio, Podimo app and Podimo service is the property of Podimo or its licensors.

We grant you a personal, limited, non-exclusive and revocable license to make use of Podimo Studio, to submit Your Content and to review statistical information about Your Content and any other information provided by Podimo to you at Podimo Studio. This license is valid until termination of these Podimo Podcaster Terms in accordance with section 13.

All Podimo trademarks, logos and domain names are the sole property of Podimo. These Podimo Podcaster Terms do not grant you any right to use Podimo trademarks, logos or domain names for commercial or non-commercial purposes without Podimo's prior explicit permission in writing.

Unless stated otherwise in your Exclusive or Non-exclusive Podcast Distribution Agreement(s) with Podimo, you grant Podimo a transferable, sub-licensable, worldwide license to:

- 1) Upload, download, store, reproduce, transmit, digitally transcode, distribute, share, makes copies of, publicly display, publicly perform, make available for public, including for listening offline, and otherwise process Your Content to the extent reasonably necessary to transmit and communicate to the public Your Content and operate Podimo service;
- 2) Transmit, display and communicate to the public Your Content in order to promote the availability of Your Content on Podimo service; and
- 3) Use Your Content for the purpose of improving personalization, simplifying content view and optimizing search functionalities on Podimo service.

Furthermore, you grant Podimo the non-exclusive, irrevocable, fully paid, worldwide right to use your name, likeness, and photo on Podimo service and in our marketing communications to promote the availability of Your Content on Podimo service.

Reference is also made to the relevant section in your Exclusive or Non-exclusive Podcast Distribution Agreement(s) with Podimo.

## **8. Warranties and representations**

You represent and warrant to Podimo on continuing basis during the term of these Podimo Podcaster Terms as follows:

- 1) Your Content is an original artwork by you or you have acquired all rights, licenses, authorizations, permissions or consents necessary to upload such content on Podimo Studio, including but not limited to licenses, consents, waivers, clearances or approvals from any collecting society or any other party;
- 2) You have acquired all rights, licenses, consents, clearances or permission in order for Podimo to enjoy its rights granted under these Podimo Podcaster Terms, free for any claims from a third party;
- 3) You are solely responsible for complying with the terms and conditions set forth in each of the third party licenses, authorizations, consents, permissions and approvals referenced in (2) above, and you are solely responsible for payment of any royalties or fees to any such third party;
- 4) Your Content and its availability at Podimo service does not infringe any third party rights, including but not limited to intellectual property, publicity, privacy or other rights of a third party;
- 5) You have acquired any necessary permission or release from any person appearing on Your Content in order to include their name, voice, performance or likeness in Your Content and to make the same publicly available on Podimo service;
- 6) Your Content is accurate and correct and complies with these Podimo Podcaster Terms, any other agreements with Podimo, including Exclusive or Non-exclusive Podcast Distribution Agreement(s), all applicable laws or regulations; and
- 7) Your Content is owned by you and remains your sole responsibility.

## **9. Your feedback or suggestions to Podimo**

If you provide feedback, ideas, or suggestions to Podimo in connection with possible new podcasts, Podimo service or content in general ("Feedback"), you acknowledge that the Feedback is not confidential and that Podimo has a right to use that Feedback without restriction and without payment to you.

You also acknowledge that Podimo is not responsible if the content available at Podimo service is identical or similar to ideas or materials that you have submitted to Podimo. You waive any claims against Podimo and Podimo's licensors in connection with the use of identical or similar ideas or materials.

## **10. Liability and indemnification**

You agree to indemnify and hold Podimo harmless from and against all damages, losses and expenses of any kind (including reasonable legal fees and costs) arising out of or related to (i) your violation of these Podimo Podcaster Terms, (ii) any activity you engage in on or through Podimo Studio, and (iii) your violation of any law, regulation or the right of a third party.

You agree that your sole and exclusive remedy for any problems or dissatisfaction with Podimo Studio is to stop using Podimo Studio.

If you are entitled to any other remedies by mandatory law provisions in your jurisdiction, you accept and agree that Podimo, its officers, shareholders, employees, subsidiaries, affiliates, successors, assigns or licensors ("Podimo and Relevant Third Parties") cannot be held liable for personal injury or any incidental, special, indirect, or consequential damages whatsoever. This includes damages for loss of profits, loss of data, business interruption, or any other commercial damages or losses related to your use of or inability to use Podimo Studio. The same applies to any claims you may have relating to Podimo Studio or these Podimo Podcaster Terms that have not been raised within one year. Furthermore, the total aggregate liability of Podimo and Relevant Third Parties cannot exceed EUR 100.

Nothing in these Podimo Podcaster Terms limits or excludes the liability of Podimo: (i) for any death or personal injury caused by its negligence, (ii) for any form of fraud or deceit, (iii) for any damages caused wilfully or by gross negligence, or (iv) for any form of liability which cannot be limited or excluded by law.

#### **11. Disclaimer, service limitations**

We do our best to provide you with accurate statistics and other data relating to the performance of your podcast(s). However, we can not guarantee that any such data is error-free at all times. Your use of such data provided by us is at your sole risk and discretion.

Likewise, we work hard to secure and protect Your Content at Podimo Studio, but we can not guarantee ongoing availability of Your Content at Podimo Studio. Please make sure to take relevant back-up copies of Your Content and do not use Podimo Studio as a single storage place for your files. Podimo is not liable for damage to, deletion of, or failure to store any of Your Content.

Podimo will make reasonable efforts to keep the Podimo Studio operational. Notwithstanding the foregoing, Podimo reserves the right to modify or discontinue the Podimo Studio or functions or features thereof temporarily or permanently without liability to you to the fullest extent permitted by law. Podimo will give you an advance notice where possible.

You access and use Podimo Studio at your own risk. You accept and agree that Podimo Studio and all its content is provided to you on an "as is" and "as available" basis. To the fullest extent permitted by applicable law, Podimo disclaim all warranties of any kind, whether expressed or implied, including but not limited to warranties of merchantability, fitness for a particular purpose and non-infringement. Podimo does not represent or warrant that Podimo Studio, your access to or your use thereof will be secure, reliable, accurate, uninterrupted, error-free or free of viruses, malware or other harmful components, or will otherwise meet your needs or expectations.

Podimo makes no representation or warranties about the quality of your listening experience, which may vary depending on your device, internet connection, location or bandwidth. Podimo is not responsible for any internet or cellular data access charges.

Podimo is not responsible for any third party software, services, websites, links or applications which are linked to, referenced in or integrated with Podimo Studio, Podimo app or Podimo service.

The above wording does not affect any warranties which cannot be excluded or limited under applicable law.

## **12. Personal data**

Your use of Podimo Studio is subject to [Podimo's Privacy Policy](#).

## **13. Term and termination**

These Podimo Podcaster Terms become effective as specified in section 2 and continue to apply until terminated by you or by Podimo.

You can terminate Your Account by contacting Podimo at <https://podimo.com/contact>.

Podimo can terminate Your Account at any time as specified in section 6 without notice and without liability to you. Podimo may also at its sole discretion choose to cease providing access to Podimo Studio in the jurisdiction where you reside or from where you are attempting to access Podimo Studio, in which case these Podimo Podcaster Terms terminate on such point of time.

Please note that termination of Your Account will terminate the applicability of these Podimo Podcaster Terms, but not necessarily your relationship with Podimo, which is subject to Exclusive or Non-exclusive Podcast Distribution Agreement, you might have entered into with Podimo. Accordingly, should you terminate Your Account without terminating Exclusive or Non-exclusive Podcast Distribution Agreement, you will lose access to functionalities available at Podimo Studio, while the rights you have granted to Podimo and your possible obligations towards Podimo will remain unchanged.

Any sections of these Podimo Podcaster Terms that by their nature must remain in effect even after termination of these Podimo Podcaster Terms, shall survive termination.

When Your Account AND your relationship with Podimo has been terminated, any and all content available at Your Account will be deleted by Podimo, except to the extent that we are obliged or permitted to retain such content, data or information for a certain period of time in accordance with Exclusive or Non-exclusive Podcast Distribution Agreement, applicable laws and regulations or in order to protect our legitimate business interests.

## **14. Assignment**

Podimo may assign and delegate any of its rights and obligations under these Podimo Podcaster Terms in whole or in part.

## **15. Third party rights and services**

You accept and agree that these Podimo Podcaster Terms do not grant any rights to anyone except you and Podimo, and that these Podimo Podcaster Terms shall in no event create any third party beneficiary rights.

Podimo Studio may contain links to third party websites or services (“Third Party Services”). These Third Party Services are not controlled by Podimo, and Podimo takes no responsibility for their content and separate third party terms may govern your use of these Third Party Services.

#### **16. Governing law and jurisdiction**

These Podimo Podcaster Terms and the rights and obligations of the parties under these Podimo Podcaster Terms are governed by and construed exclusively in accordance with the laws of Denmark without regard to conflict of law principles. The City Court of Copenhagen shall have exclusive jurisdiction for disputes or claims arising out of these Podimo Podcaster Terms or otherwise related to use of Podimo Studio.

#### **17. Class action waiver**

Where permitted under the applicable law, you and Podimo agree to bring claims against the other only in your or its individual capacity and not as a plaintiff or class member in any purported class or representative action. Unless both you and Podimo agree, no judge may consolidate individual claims or otherwise preside over any form of a representative or class proceeding.

#### **18. Contact**

If you have any questions, comments or complains related to Podimo Studio or these Podimo Podcaster Terms, please contact Podimo by using [this link](#) .