



**syncYD Terms of Service:** syncYD powered by YDIGITAL MEDIA provides certain services which enable the User to synchronize any event broadcasted on TV or radio with a digital boost on different media platforms like mobyd, Google, Youtube, Facebook or Instagram ("**Services**"). The Services are subject to (i) these terms and conditions ("**Terms**"), (ii) the terms and conditions of any applicable order form that the User enters into which specifically refers to these Terms ("**Order Form**") and (iii) any additional terms and conditions that the User has accepted, each of which are hereby incorporated by reference and together with the Terms form the "**Agreement**".

**1) Definitions** in the Agreement:

- a) "**Account**" means the User's account on the Platform.
- b) "**Affiliates**" means, with respect to an entity, any other entity that directly or indirectly controls, is controlled by, or is under common control with such entity.
- c) "**Distribution Platforms**" means third party providers of marketing/advertising technologies (such as Adservers, DSPs, search or social marketing platforms), or tracking/analytics technologies, or on-site optimization technologies, or any other technology where the User has indicated one or several Marketing Entities that could trigger one or several Marketing Actions required by the User.
- d) "**Live Data**" means all the data syncYD generates from its own technology or collects from third party data provider or from the User, that will be used by the User to create a Synchronization Scenario. Live Data refers to specific television or radios content including but not limited to TV/radio spots, TV/radio programs, movie trailers, weather data, sport data, etc
- e) "**Marketing Action**" means an action required by the User and triggered via a Distribution Platform, in accordance with the related Marketing Entity, that the User wants to implement in synchronization with Live Data, such as the broadcast of advertisings (video, display, social media, search).
- f) "**Marketing Entity**" means the configuration information of a Marketing Action (i) indicated by the User on a Distribution Platform, (ii) identifiable by a unique ID chosen by the User and (iii) which aims at triggering the related Marketing Action (such as marketing campaigns, experiments, etc).
- g) "**Party**" / "**Parties**" means either the User or syncYD powered by YDIGITAL MEDIA, or both the User and syncYD powered by YDIGITAL MEDIA together.
- h) "**Platform**" means the platform developed by YDIGITAL MEDIA to deliver the Technology and provide the Services, available at: <https://syncyd.ydigitalmedia.com>.

- i) **“Representative”** means the User if the User is an advertising or communication agency or other entity representing a Third Party within the use of the Services and the Technology.
- j) **“Synchronization Scenario”** means a set of rules and conditions defined by the User on the Platform on the basis of Live Data and Distribution Platforms, with which the User wants to synchronize its Marketing Entities.
- k) **“syncYD”** means the product developed by YDIGITAL MEDIA, S.A.. Rua Pedro Nunes - IPN Incubadora, Instituto Pedro Nunes Edif. C 3030-199 Coimbra. Portugal
- l) **“Technology”** means a technology developed by YDIGITAL MEDIA that allows the identification of Live Data in order to be synchronized with Marketing Entities through Distribution Platforms.
- m) **“Third Party”** means an advertiser or any other third party the User represents if the User acts as a Representative.
- n) **“User”** means the entity entering the Agreement with YDIGITAL MEDIA.

**2. Access to the Services and the Technology** In order to benefit from the Services and have access to the Technology, the User shall:

- (i) enter into an Order Form with YDIGITAL MEDIA, sign the Order Form and return it to YDIGITAL MEDIA by any appropriate mean;
- (ii) connect to the Platform by either (a) create an Account by indicating all the required information and accept the Terms by ticking the box at the end of the process of subscription, or (b) if the User already has an Account, indicate its user name and its password;
- (iii) connect its Account to its accounts on the Distribution Platforms of its choice.

**3. Use of the Services and Technology** Once the User has signed an Order Form and created an Account, the User can connect to the Platform by indicating its user name and its password, and define Synchronization Scenarios as many times as it wants, on the basis of the payment terms defined in the Order Form. The User can also modify the list of the Distribution Platforms it wants to be connected with as well as the packs of channels.

**4. Data** As between the User and YDIGITAL MEDIA, the User will own all data derived from its use of Services and Technology provided that YDIGITAL MEDIA may use and disclose such data solely

- (i) as aggregate Service statistics, which will not include personally identifiable information or information that identifies or would reasonably be expected to identify the User or any of the Third Parties the User represents if it is a Representative,
- (ii) to provide Services and enforce its rights under the Agreement (it being understood and agreed that the User’s non-aggregated data will not be used or disclosed to any third party by YDIGITAL MEDIA (except as otherwise expressly permitted by the Agreement) without the User’s written consent) and
- (iii) if and as required by court order, law or governmental or regulatory agency (after, if permitted, giving reasonable notice to the User and using commercially reasonable efforts to provide the User with the opportunity to seek a protective order or the equivalent (at the User’s expense)).

## **5. Payment**

(a) The User will pay YDIGITAL MEDIA the fees as agreed by the Parties, and listed in the Order Form(s) and addenda, within terms and delays agreed in the Order Form(s), and by wire transfer, check or other means expressly agreed to in writing by the Parties in the Order Form. The User acknowledges and agrees that the fees indicated in the Order Form are exclusive of taxes and that the User shall pay all applicable taxes and other government charges.

(b) Late payments that are not disputed in good faith bear interest at a rate equal to three times the statutory rate of interest. The User will also be automatically liable for the payment of a fixed rate allowance for recovery costs, for a €40 amount.

## **6. Obligations of the Parties**

(a) YDIGITAL MEDIA will:

(i) provide Services to the User, and obtain all rights necessary to provide Services hereunder;

(ii) monitor Live Data according to the Synchronisation Scenarios defined by the User on the Platform;

(iii) ensure that Live Data generated from YDIGITAL MEDIA's own technology or collected from third party data provider have been generated or collected in compliance with all applicable rules.

(b) The User will:

(i) comply with the process as described in article 2 above and, more generally, with the terms of the Agreement;

(ii) if applicable, ensure that Live Data collected from the User have been collected in compliance with all applicable rules.

(c) If the User is a Representative:

(i) the User agrees to ensure that all provisions of the Agreement are complied with by both the User and any Third Party which it represents. The User shall be directly liable to YDIGITAL MEDIA for any act or omission in this regard;

(ii) the User represents, warrants and undertakes that at all times it is the authorized representative of a Third Party and it is authorized to enter into and perform the Agreement in the name and/or on the Third Party's behalf. Upon YDIGITAL MEDIA's request, the User will immediately deliver to YDIGITAL MEDIA each agreement that authorizes the User to act on the Third Party's behalf in connection with the Agreement.

## **7. Warranties and liability**

(a) The User warrants that it is a company acting as a professional.

(b) The User's password protects its Account, and the User is sole responsible for keeping its password confidential and secure. The User undertakes that it is responsible for all use of its Account on the Platform. If the User's username or password is lost or stolen, or if the User believes there has been unauthorized access to its Account by third parties, the User shall notify YDIGITAL MEDIA immediately and change its password as soon as possible.

(c) YDIGITAL MEDIA cannot be liable for

(i) the implementation of the Marketing Entities and

(ii) the trigger of the Marketing Actions the User decided to synchronize with Live Data according to the Synchronization Scenarios it indicated on the Platform.

(d) In the case of Synchronization Scenarios linked to an advertising campaign, the User has sole responsibility for the purchase of the advertising spaces required for the distribution of the synchronized advertising campaigns. The User acknowledges that under no circumstances can YDIGITAL MEDIA, a mere provider of technical services, be held responsible for the inventories of publishers through which the synchronized advertising campaigns are to be distributed. In particular, YDIGITAL MEDIA may not be held liable if, at the time when synchronized advertising campaigns are distributed, the concerned publishers do not have an adequate inventory to offer.

(e) The User is solely responsible for all use of Services hereunder (including, without limitation building Synchronization Scenarios and connecting its Account to its accounts on the Distribution Platforms selected) and all inquiries relating to Marketing Actions, their trigger and/or implementation. In particular, the User acknowledges that under no circumstances can YDIGITAL MEDIA be liable because:

(i) the User made a mistake when indicating the Synchronization Scenarios on the Platform. In that respect, the User acknowledges and agrees that information registered by YDIGITAL MEDIA on the Platform prevail over any other information;

(ii) of any aspect of the Marketing Actions, their trigger and/or implementation.

(f) The User warrants YDIGITAL MEDIA that the User shall solely bear all and any obligation or responsibility regarding any applicable personal data protection law or regulation for any collection or processing of data implemented by the User within the its own business activity and for the performance of the Agreement. It is expressly reminded that YDIGITAL MEDIA will not receive from the User any personal data for the performance of the Services but only anonymous information that will not permit to identify, directly or non-directly, any individual working for the User or any of its clients. Therefore YDIGITAL MEDIA shall not in any manner be considered as personal data controller nor as personal data processor in the meaning of the EU Directive n°95/46/CE and shall not be held responsible for compliance with data protection rules within the framework of the Services provided under the Agreement.

(g) Each Party represents and warrants to the other that:

(i) it has all right, power, and authority necessary to enter into the Agreement, perform its obligations hereunder and grant the rights it grants to the other Party hereunder;

(ii) it will perform its obligations under the Agreement with reasonable skill and care;

(iii) it will comply with all applicable laws, regulations, orders and other requirements of any governmental authority related to the performance of its obligations under the Agreement.

**8. Limitation of Liability** To the fullest extent permitted by applicable law:

(i) no Party to this Agreement shall be liable for any indirect damages (including, without limitation, damages for loss of business profits, loss of business opportunity, loss of or corruption of data, loss or damage resulting from third party claims, business interruption, good will, or other pecuniary loss) whether in contract, tort (including without limitation negligence) or any other legal theory, even if advised of the possibility of such damages and notwithstanding any failure of essential purpose of any limited remedy; and

(ii) each Party's aggregate liability under the Agreement shall not exceed the greater of (a) the amounts paid or payable under the Agreement, or

(b) €150,000. Notwithstanding anything to the contrary, nothing in this Section or this Agreement shall be construed to exclude or limit any liability of either party which cannot be excluded or limited under applicable law (such as for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation).

## **9. Indemnification**

(a) YDIGITAL MEDIA agrees to defend the User (including its parents, subsidiaries, officers, directors, employees, and Affiliates), against any claim by a third party that is related to YDIGITAL MEDIA's breach of any representation or warranty made herein. YDIGITAL MEDIA agrees to indemnify the User for settlement amounts or damages, liabilities, costs and expenses (including attorneys' fees) awarded and arising out of such claims.

(b) The User agrees to defend YDIGITAL MEDIA (including its parents, subsidiaries, officers, directors, employees, and Affiliates) against any claim by a third party that is related to

(i) the Marketing Actions and their implementation;

(ii) The User's breach of any representation or warranty made herein;

(iii) if the User is a Representative, its relationship with the Third Parties it represents. The User agrees to indemnify YDIGITAL MEDIA for settlement amounts or damages, liabilities, costs and expenses (including attorneys' fees) awarded and arising out of such claims.

(c) Upon the assertion of any claim or the commencement of any suit or proceeding against an indemnitee by any third party that may give rise to liability of an indemnitor hereunder, the indemnitee shall promptly notify the indemnitor of the existence of such claim specifying the nature of the action, the total monetary amount and/or other relief sought therein. The indemnitee shall give the indemnitor a reasonable opportunity to defend and/or settle the claim at its own expense and with counsel of its own selection. The indemnitee shall have the right to employ separate counsel and participate in the defence at its sole expense. Neither Party shall settle any claim without the prior written approval of the other Party, such approval not to be unreasonably withheld.

## **10. Confidentiality**

(a) For the purposes of this Article, the term "Confidential Information" designates any information in any form emanating directly or indirectly from one of the Parties (or from a company in the same group or from one of its directors, employees, consultants or agents) and includes compilation in a form which has not previously been publicly available of information which is publicly available in other forms. Confidential Information includes the following items (non-exhaustive list):

(i) the terms and conditions of the Agreement;

(ii) any information, document or data in any form whatsoever communicated by one or other of the Parties and relating to the Platform, the Technology and the User's products or services or the ones of the Third Parties the User represents if it is a Representative;

(iii) information of any nature relating to the commercial policy of one of the Parties. Information is not considered to be Confidential Information if:

(i) it is already in the public domain at the time it is disclosed; (

ii) after disclosure, it has become publicly known other than due to a breach of the Contract;

(iii) the Party which received the information can demonstrate that it was already aware of the information and was not subject to any obligation of confidentiality or restriction of use in relation to it at the time when the said information was disclosed by the other party; or

(iv) the Party which received the information can demonstrate that it was generated independently by the personnel of companies belonging to the same group, who were not aware of the information disclosed by the other Party.

(b) The Parties shall not pass on Confidential Information received during the period of validity of the Agreement, even after the expiry of the said Agreement, whatever the reason for termination, and shall use it only in strict pursuit of the purposes of the Agreement and with the prior written agreement of the Party which disclosed it. They shall limit the distribution of Confidential Information to what is strictly necessary for the effective execution of the Agreement and shall pass on this obligation of confidentiality to those to whom such information is disclosed. Each of the Parties shall return to the other Party all media carrying Confidential Information which it owns, on expiry of the Agreement and on written request at any time. The obligation of confidentiality for which this article provides shall endure so long as the Confidential Information is not published by its owner.

(c) Notwithstanding the above, following written authorization given by the Party who holds the rights, the other Party may for the purposes of internal and external communications respectively make known the fact of the signature of the Agreement, and mention the name and branding of the other Party on any material which it may distribute to its respective Partners and/or business prospects. A communication from one of the Parties mentioning the other party should be given prior agreement by any written means by the party concerned.

**11. Force majeure** YDIGITAL MEDIA shall have no liability under the Agreement (to the fullest extent permitted by applicable law) by reason of any failure or delay in the performance of its obligations on account of strikes, shortages, riots, acts of terrorism, insurrection, fires, flood, storm, explosions, earthquakes, Internet and/or electrical outages, computer viruses, acts of God, war, governmental action, or any cause that is beyond YDIGITAL MEDIA's reasonable control.

## **12. Modification and termination**

(a) YDIGITAL MEDIA may change the Terms at any time by making them available on the website <https://syncyd.ydigitalmedia.com> and, in case of substantial modifications, by providing the User with a written notice by any appropriate mean (email, letter...). The new Terms will enter into force within a 15-day delay following the day YDIGITAL MEDIA sends the notice to the User. Any use by the User of the Services, the Technology or the Platform after such notice shall be deemed to be continued acceptance by the User of the then current Terms. If the User does not agree to such amended Terms, it must immediately:

(i) notify YDIGITAL MEDIA in writing; and

(ii) stop using the Services, the Technology and the Platform.

(b) The Agreement shall remain in force until written termination is served by either Parties. Termination can take place at any time providing written notice of three (3) months is served. Termination must be sent either by electronic mail with read or delivery receipt or by recorded delivery letter.

(c) In the event of failure by one of the Parties to fulfil any of its obligations, the termination will take place automatically after the despatch of a formal warning sent either by electronic mail with read or delivery receipt or by recorded delivery letter and receiving no response within 8 days of its delivery.

(d) In case of termination of the Agreement, the User's Account will be immediately closed and disconnected from its accounts on the Distribution Platforms. The User will have no longer access to the Platform, the Services and the Technology and will have to pay to YDIGITAL MEDIA the Services provided by YDIGITAL MEDIA until the date of the termination, if any.

(e) Upon termination of the Agreement, any personally identifiable information or information that identifies or would reasonably be expected to identify the natural person acting on behalf of the User for the purpose of access and use of the Services and Technology shall be deleted permanently.

**13. Intellectual Property** All the components of the Platform and the Technology, be they visual or audio components, including the underlying technologies and the database, are covered by copyright, trademarks, patents, designs or any other protection granted by any applicable intellectual property rights. They are YDIGITAL MEDIA's exclusive property. Any reproduction, representation, adaptation, or any unauthorized use of all or part of any of the components of the Platform or the Technology may constitute an infringement of YDIGITAL MEDIA's intellectual property rights which may result in civil and criminal liability for the person infringing or participating in the infringement of such rights. Embedding a hyperlink in the Platform to any other website by using the technique known as "framing" or "deep linking" is strictly prohibited.

#### **14. Miscellaneous.**

(a) To the fullest extent permitted by applicable law of the User's country, the User acknowledges and agrees that:

(i) the Agreement and any dispute or claim arising out of or in connection with it (including any dispute or claim relating to non-contractual obligations) shall be governed by and construed in accordance with the laws of Portugal;

(b) The Agreement and any other document or information expressly referred to therein constitute the entire agreement between the User and YDIGITAL MEDIA regarding the subject matter to which it relates and supersede and extinguish all previous agreements, understandings, proposals, representations, claims, and communications regarding that subject matter.

(c) All notices of termination or breach of the Agreement must be in writing and addressed to the other Party's Legal Department (or if it is not known if the other party has a Legal Department then to the other Party's primary contact). The email address for notices being sent to YDIGITAL MEDIA's Legal Department is legal@ydigitalmedia.com All other notices must be in writing and addressed to the other Party's primary contact. Notice will be treated as given on receipt, as verified by written or automated receipt or by electronic log (as applicable).

(d) In the event of a conflict between the Terms and the Order Form, the conflict shall be resolved to the extent necessary to do so according to the following order of precedence:

(i) Order Form provided that it has been properly executed on behalf of both the User and YDIGITAL MEDIA by duly authorised representatives;

(ii) Terms. (e) Neither Party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under the Agreement. If any term (or part of a term) of the Agreement is invalid, illegal or unenforceable, the rest of the Agreement will remain in full force and effect.

- (f) Neither Party may assign any part of these Terms without the written consent of the other Party, except to an Affiliate but only where
- (i) the assignee agrees in writing to be bound by these Terms,
  - (ii) the assigning Party remains liable for obligations under these Terms if the assignee defaults on them, and
  - (iii) the assigning Party has notified the other Party of the assignment. In addition, YDIGITAL MEDIA may assign any debt which is owed to YDIGITAL MEDIA by the User to a third party without the User's consent. Any other attempt to transfer or assign is void.
- (g) The User and YDIGITAL MEDIA are independent contractors and nothing in the Agreement shall be construed to create evidence or imply any agency, employment, partnership, or joint venture between the User and YDIGITAL MEDIA.