

# Terms & Conditions for Advertisers

## General terms and conditions for online advertising

Updated as of January 23rd 2020

THIS ADVERTISING AGREEMENT consists of the general Terms and Conditions below, any applicable Annexes, and any Amendments to the foregoing (collectively referred to as the “Agreement”). This Agreement is valid for all commercial relationships between video intelligence AG (formerly “Viewster AG), Mühlebachstr. 54, CH-8008 Zürich (“vi”) and its advertising clients (“Advertiser”) regarding the provision of online marketing services by vi.

### 1. Conclusion of Insertion Orders

1.1 An Insertion Order on the provision of online advertising services shall come into being when vi accepts an insertion order submitted by the Advertiser (“Insertion Order”). The specific Insertion Order in question shall contain the respective scope of performance including but not limited to campaign run dates, territorial restrictions and pricing . If the provisions of an Insertion Order diverge from those of these Terms and Conditions, the provisions of the Insertion Order shall take precedence.

1.2 If the Advertiser is an advertising agency or an advertising intermediary not acting in their own name, the agency and the advertising intermediary is obliged to specify (and prove) for whom it is placing the advertising.

1.3 General terms and conditions or any other standard contract terms of the Advertiser or third parties shall not apply, even if vi does not object to them expressly in an individual case.

### 2. Obligations of the Advertiser

2.1 The Advertiser shall supply the contractually agreed advertising materials (“Ad Media”) at his own expense by the Creative Deadline (as defined in the Insertion Order) in complete and perfect condition and in accordance with the contractual agreements.

2.2 If the Advertiser does not comply with the Creative Deadline with the result that the Ad Media can be published only with a delay or not at all, this shall not affect Advertisers payment obligations under the Insertion Order.

2.3 The Advertiser will ensure that the Ad Media is clearly recognizable as advertising. Insofar as the Ad Media is not clearly recognizable as advertising, vi shall be entitled to identify the Ad Media as advertising, in particular by labelling it with the word “Advertisement” or similar indications to make clear its advertising character.

2.4 vi is not obliged to check the Ad Media or the links referred to by the Ad Media, including the content of those links. Any checks carried out by vi shall not release the Advertiser from his responsibility for the Ad Media and/or the links, including the content of those links.

### **3. Services provided by vi**

3.1 vi will incorporate/embed the Ad Media into the ad space (“Ad Space”) of the vi media player, any other media player or app owned or controlled by vi or its Affiliates (the “vi Network”), and any third party websites for which vi has the right to sell advertising inventory in the scope and for the period as agreed in the respective Insertion Order.

3.2 If the parties agree in the Insertion Order upon a maximum number of internet users’ visual contact with the Ad Media (“Ad Impressions”), retrievals of the website on which the Ad Media is placed (“Page impressions”), internet users’ clicks on Ad Media (“Ad Clicks”) or any other internet users’ action such as the purchase of a product, the installation of an application or the registration for a newsletter after an internet users’ clicks on Ad Media (“Lead”), the placement of the Ad Media shall be made only for the respective period. Insofar as vi has assured the Advertiser that it will deliver a particular number of Ad Impressions, Page Impressions and/or Ad Clicks within a particular period and the number thus assured was not delivered in full during this period, vi shall be entitled, but not obliged, to carry on placing the online advertising in question and subsequently deliver the still missing number of Ad Impressions, Page Impressions and/or Ad Clicks. The deadlines for such delayed deliveries shall be coordinated with the Advertiser taking the legitimate interests of both parties into account. If the agreed number is not delivered subsequently within the period allowed for delayed delivery, the Advertiser shall be entitled to reduce the remuneration proportionally for the Ad Impressions, Page Impressions and/or Ad Clicks that were not delivered. vi shall refund any Ad Impressions, Page Impressions and/or Ad Clicks found to be fraudulent by independent, industry-widely recognised ad fraud companies White Ops or Integral Ads.

3.3 vi shall be entitled to edit the Ad Media with regard to its format, size and technical properties insofar as vi regard this as necessary for the delivery of the Ad Media and reasonable for the Advertiser in consideration of vi’s interests. vi shall not be obliged to hand over the Ad Media to the customer upon termination of the online advertising or to retain it.

3.4 If technical circumstances prevent publication on the agreed date, provided that vi was not responsible for such obstacles arising, vi shall be entitled to postpone or cancel an agreed date for the publication of the Ad Media.

### **4. Grant of Rights**

4.1 The Advertiser hereby grants vi and the Affiliates of vi the non-exclusive, worldwide right to integrate the Ad Media into the Ad Space, to present and publish it there and to make it accessible and transmit it to the general public and closed user groups via fixed and mobile communications networks in places and at times of their choice for the purpose of simultaneous or successive use and to reproduce the Ad Media for the above purposes.

4.2 The above grant of rights also refers, in particular, to existing copyrights and ancillary copyrights applicable to the Ad Media, privilege as to one’s own image, rights to bear names and titles, trademark rights and other identification rights.

## **5. Rejection of Ad Media**

5.1 vi shall be entitled to either wholly or partly reject and remove (either temporarily or permanently) Ad Media that contains illegal content or any other content that infringes vi's Code of Conduct for Advertiser.

5.2 If there is reasonable suspicion that the Ad Media provided by the Advertiser contains illegal content or any other content that infringes vi's Code of Conduct for Advertiser, vi shall be entitled to discontinue its publication until the Advertiser succeeds in dispelling the suspicion. A reasonable suspicion in this sense shall apply in particular when such a suspicion has been induced by official proceedings or by a criminal investigation or when there are comprehensible grounds for believing that such proceedings will soon be initiated. The same shall also apply if vi is requested by a third party to refrain from any further placement of the Ad Media because it is illegal or infringes third-party rights, provided that the third party's claim is not clearly, and for vi recognizably, unfounded.

5.3 Sections 5.1 and 5.2 shall also apply accordingly if the Ad Media advertise or provide a link to illegal content or any other content that infringes vi's Code of Conduct for Advertiser.

## **6. Remuneration and Tracking Results**

6.1 The fees payable by the Advertiser for vi's services shall be set out in the respective Insertion Order, in which the parties shall agree upon the basis on which the remuneration is calculated, e.g.:

- 1000 Page Impressions or Ad Impressions ("Thousand Contact Price" or "TCP"),
- an Ad Click ("Cost Per Click" or "CPC") or
- a Lead ("Cost per Lead" or "CPL").

6.2 The sole authoritative factor for the counting of the quantity of Ad Impressions, Page Impressions, Ad Clicks or Leads shall be vi's reporting activities. If the Advertiser has counted divergent quantities, these shall not be taken into account if the divergent counts do not demonstrably differ by more than 10%. In other cases the parties shall come to an agreement on the counted quantity that is authoritative for the contractual relationship. If the parties are unable to agree within twenty days on the definitive quantity counted, they shall have recourse to a neutral, approved and generally accepted arbitration board to resolve the dispute in accordance with its arbitration rules as amended at the time the arbitration proceedings were initiated.

6.3 Unless otherwise agreed in an Insertion Order, vi shall charge the agreed remuneration for the services rendered after the promotion in question has come to an end. If the term of the promotion is longer than one month, vi can charge the agreed remuneration at the end of the respective month. Unless otherwise agreed in an Insertion Order the agreed sum shall be payable on issue of the invoice and must be transferred without deductions to vi's bank account within net 30 (thirty) days.

6.4 All agreed prices are strictly net and must be paid plus the statutory rate of VAT.

## **7. Warranties and Force Majeure**

7.1 The Advertiser warrants (i) that it either owns fully and outright or otherwise possesses and has obtained all rights, approvals, licenses, consents and permissions as are necessary to perform its

obligations hereunder, and that the Ad Media is free of any third-party rights (in particular trademark rights, patent rights or copyright) which would prevent to use the Ad Media as defined by the Insertion Order and this Agreement.

7.2 The Advertiser further warrants that the transmitted Ad Media does not infringe any provision of vi's Code of Conduct for Advertisers (s. Annex).

7.3 vi does not assume any warranty for the secure, interruption-free or error-free operation of its media player or another part of its website.

7.4 The Advertiser shall be obliged to check the online advertising containing the Ad Media without undue delay after its publication and to notify vi in writing of any discernible errors without undue delay but no later than one week after the publication. If the Advertiser fails to provide notification in this way, the online advertising shall be regarded as approved in accordance with the respective Insertion Order and this Agreement, unless the error was not discernible at the time of the check. If an error in the online advertising becomes apparent at a later date, the Advertiser must give notification of it without undue delay upon its discovery, otherwise the online advertising shall be deemed approved even in consideration of this error.

7.5 In cases of force majeure, vi shall be released from its obligation to render its services. All unforeseen events and events having impact on the performance of the Insertion Order or this Agreement for which neither of the parties is responsible shall be deemed force majeure. Such events shall include without limitation lawful means of industrial action, also in third-party companies, official measures taken by authorities, the failure of communication networks and gateways of other operators, disruptions in the area of network sellers, other technical mal-functions, including when such circumstances occur in the area of subcontractors, sub-suppliers or their subcontractors, or operators of subnodal data processors. No entitlements shall result for Advertisers from any failures for which vi is not responsible.

## **8. Limitation of Liability**

8.1 Under no circumstances shall either party be liable to the other for indirect, incidental, consequential or exemplary damages (even if the other party has been advised of the possibility of such damages) arising from or out of this Agreement.

8.2 With the exception of instances of gross negligent or wilful intent, the liability of vi shall be limited to the amounts payable by Advertiser pursuant to this Agreement in the twelve month period leading up to the claim.

## **9. Third Party Claims and Indemnification**

9.1 The Advertiser shall indemnify and release vi and/or affiliates of vi from any and all claims asserted by third parties against vi because of an infringement (i) of intellectual property rights, (ii) legal provisions (e.g. criminal law, youth protection law, unfair competition law) as a result of the use of the Ad Media in conformity with the Insertion Order and/or as a result of the promoted subjects (e.g. an Advertiser's offer or website) or (iii) of vi's Code of Conduct for Advertiser. In this regard, the Advertiser shall also assume the necessary costs incurred by vi in defending its rights, including any

and all court costs and lawyers' fees. This does not apply if and to the extent that the Advertiser is not responsible for the violation of rights. The limitations on liability in Section 9 shall not apply for the indemnification obligation. Any compensation claims asserted on grounds of loss or damage going beyond this shall remain unaffected by the indemnification obligation.

9.2 vi and/or the affiliate of vi undertake not to acknowledge third-party claims without the Advertiser's consent and not to reach any settlement on the matter in question with the third party. The Advertiser, however, may refuse his consent only for good cause.

## **10. Communication and Confidentiality**

10.1 Confidential Information. As used herein, "Confidential Information" means any non-public information, regardless of whether it is in tangible form, disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") in connection with this Agreement and which is identified or marked as "confidential" or "proprietary" or which, given the nature of the information or the circumstances surrounding its disclosure, should reasonably be understood to be confidential or proprietary. vi Confidential Information includes, without limitation, the terms of this Agreement and any non-public information relating to this Agreement. Except as otherwise expressly permitted under this Agreement, the Receiving Party will not disclose any Confidential Information to third parties. Notwithstanding the forgoing, Advertiser acknowledges that vi may share Confidential Information with third parties solely in order to fulfil its obligations under this Agreement and any applicable Insertion Orders.

10.2 Information shall not be deemed Confidential Information if the Receiving Party can show by competent evidence that such information: (a) was known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (b) became known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (c) became publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party; or (d) was independently developed by the Receiving Party without use of or reference to the Confidential Information.

10.3 Each Party shall use reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use or reproduction of the other Party's Confidential Information during the Term and for a period of three (3) years following the termination of this Agreement. Confidential Information may be disclosed only to: (a) employees and agents of the Parties that have a need to know such information in the course of their duties (and with respect to agents, who are under a contractual duty to protect the Disclosing Party's Confidential Information in a manner consistent with the obligations imposed by this Section 11); (b) legal or financial advisors or potential acquirers of each of the Parties on a need to know basis (provided that such advisors and/or acquirers are under a contractual or professional duty to protect the Disclosing Party's Confidential Information in a manner consistent with the obligations imposed by this Section 11); (c) if required by law or valid order of a court or other governmental authority (provided that the Receiving Party delivers reasonable prior written notice to the Disclosing Party (if legally permissible) and uses commercially reasonable efforts to cooperate with the Disclosing Party's attempt to obtain a protective order). Upon written request of the Disclosing Party, the Receiving Party agrees to promptly return to the Disclosing Party or destroy

all Confidential Information that is in the possession of the Receiving Party.

## **11. Term and Termination**

11.1 This Agreement shall come into effect on the date of signature of the first Insertion Order between the parties, and shall remain in effect for as long as there is an Insertion Order active between the parties.

11.2 vi may terminate any Insertion Order if vi in its sole discretion determines that Advertiser is engaging in behaviour that may be construed as illegal, unethical, defamatory or otherwise may reflect negatively upon vi's reputation.

## **12. Applicable Law, Jurisdiction**

12.1 The Insertion Orders and this Agreement shall be, in its application and interpretation, governed exclusively by the laws of Switzerland. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1998 shall not apply.

12.2 Zürich (Switzerland) is agreed upon as place of jurisdiction for any and all claims arising from or due to this Agreement.

## **13. Miscellaneous**

13.1 vi reserves the right to change these terms and conditions at any time. Such changes shall be communicated on the vi website and shall come into effect two weeks from the date of publication. During an ongoing contractual relationship or campaign, the Advertiser may terminate the contractual relationship concerned in writing within two weeks of the notification of the change. Active campaigns will be suspended at the time of termination; however, termination of this Agreement shall not relieve the Advertiser of any payment obligations due under this Agreement. If the Advertiser continues to use the services related to this Agreement, the changes to the advertising conditions in full will be deemed to have been accepted.

13.2 vi shall be entitled to either wholly or partly transfer the rights and duties under the Agreement to vi Affiliates.

13.3 Any invalidity of individual provisions of this Agreement shall not affect the validity of the remaining provisions. Such invalid provisions shall be replaced primarily by legally valid provisions that come as close as possible in economic terms to the invalid provisions. The same shall apply to any lacunae.

### **ANNEX: vi CODE OF CONDUCT FOR ADVERTISER**

vi AG, Mühlebachstr. 54, CH-8008 Zürich ("vi") provides services that allows advertisers ("Advertisers") to present advertising media (esp. videos) in a unique format and appearance ("Ad Media") via its website or applications by incorporating or embedding the Ad Media into vi's website, esp. into vi's media player ("vi Ad Space").

# 1. Ad Media

1.1 Advertiser shall provide their Ad Media to vi in an appropriate data format. The Ad Media shall be suitable for the agreed purposes and of low-maintenance. Ideally, the Ad Media only has to be set up once and then remain valid and functional without any further maintenance.

1.2 vi is not responsible for checking the Ad Media provided by the Advertiser. Instead, the Advertiser guarantee that the Ad Media complies with this Code of Conduct and does not pose any legal risk for vi.

# 2. Content

The Ad Media shall not include, engage in, promote or constitute any product or service that is or is connected to:

2.1 incentivized traffic or users;

2.2 the sale or consumption of illegal, recreational drugs or prescription drugs, alcohol or tobacco products, fake or counterfeit goods including without limitation products described as the following, or similar, when referring to a brand name in an attempt to pass themselves off as genuine products of the brand owner: knock

off, replica, limitation, clone, fake or other nongenuine products that mimic brand features in an attempt to pass themselves off as the genuine product;

2.3 software pirating, including websites that facilitate the use or download of illegal content, or are engaged in any illegal activity, including torrent sites, P2P or file sharing sites;

2.4 false, deceptive, fraudulent or misleading;

2.5 the promotion of some products or services that cause damage, harm, or injury;

2.6 adult products or adult services, sexually explicit, pornographic or obscene (whether in text or in graphics) content;

2.7 offline and online gambling, online casino based games regardless of whether money is exchanged;

2.8 "Hate Speech" or any content which includes images that are offensive, profane, threatening, harmful, harassing or discriminatory (based on age, race, ethnicity, creed, national origin, religion, gender, marital status, sexual orientation, physical disability or otherwise);

2.9 violent or bullying;

2.10 YouTube Scrapers, CD/DVD/Blue Ray Ripping/Copying;

2.11 encouraging unlawful behaviour or conduct;

2.12 scams, illegal activity and/or illegal contests, pyramid schemes, or chain letters;

2.13 spam or other mass advertisement means;

2.14 defamatory, libellous, slanderous or obscene;

2.15 cracking or hacking;

2.16 Ad Media must lead an end user to the same landing page when the Ad Media is clicked. Such landing page must be functioning and may not interfere with an end user's ability to navigate away from the page or from using any browser, websites' or other functionality;

2.17 Ad Media may not mislead the user by mimicking system error messages or otherwise. For example, it may not mimic or resemble Windows/Mac/Unix dialogue boxes, error messages, imitate presupposed knowledge about the functionality of a user's computer or the discovery of viruses, worms, corrupted files to scare users into purchasing or downloading software;

- 2.18 Ad Media may not be misleading and/or deceptive, including without limitation, by using the word “free” when product or offer is not free, using the word “winner” when the user has not in fact won anything;
- 2.19 Ad Media may not be designed to mislead users into clicking through to a site that is unrelated to the content of the Ad Media;
- 2.20 Ad Media may not perform an automatic download to a user’s device or present a download dialog box without first presenting detailed information and a User affirmed click to proceed with the download;
- 2.21 Ad Media may not include fake “close” buttons;
- 2.22 Ad Media must not be targeted at minors (i.e., children under the age of 13) and/or offer products or services that are illegal for minors to buy, possess, or participate in;
- 2.23 any program code designed to contaminate other computer programs or computer data, consume computer resources, which includes but is not limited to any virus, worm, Trojan horse, hidden file, lock, clock, “back door”, copy protection feature, CPU serial number references or other device, computer code or program which may contaminate, destroy, disable, disrupt, erase, harm, impede or modify normal performance or functionality.

### **3. Privacy**

Advertiser will have in place a privacy policy that complies with all applicable data protection laws, rules and regulations and at a minimum provides adequate notice, disclosure, and choices to consumers regarding your use, collection, disclosure, and security of their personal information; if Advertiser is an ad agency they will contractually oblige their advertisers to have in place a privacy policy that complies with all applicable laws. If you are a publisher agency you will contractually oblige your publishers to have a privacy policy which complies with all applicable laws. The ads or the ad placements will comply with applicable industry self-regulations (such as the Digital Advertising Alliance (“DAA”) (available at: <http://www.aboutads.info/principles>)). Advertiser shall be solely responsible and solely liable for its compliance with all applicable data protection laws, rules and regulations.

To the extent applicable, Advertiser hereby agrees to provide an opt-out mechanism for receiving ads or to contractually oblige their advertisers to provide an opt out mechanism.