

## TERMS AND CONDITIONS

By utilizing the Brandzooka platform and any associated Services, User hereby agrees as follows:

### 1. CERTAIN DEFINITIONS.

1.1 “Services” means the Brandzooka hosted platform (“Platform”) along with any associated analytics, campaign management and any other services Brandzooka provides to User.

### 2. SERVICES.

2.1 **Licenses.** Subject to this Agreement and as long as User is paid up, Brandzooka grants User a non-exclusive, non-sublicensable and non-transferable right to access the Platform and to use the functionality made available by the Platform on a self-serve basis. User will obtain, and hereby grants to Brandzooka, all rights and permissions needed to authorize Brandzooka to buy inventory on User’s behalf (and any third party on whose behalf User is acting), perform tracking and analytics, and to store and serve ads. During the Term Brandzooka may offer additional services beyond those described herein. Fees for such services will be shown in the Platform user interface. In addition, to the extent that User requests Brandzooka’s help to manage campaigns and/or to use the Services, whether such requests are verbal or in writing, User consents to the actions that Brandzooka performs on its behalf. User retains sole responsibility for such assisted use of the Services.

2.2 **Reporting.** User will have access to Brandzooka’s online reporting interface. All reports from the interface are for User’s internal use only.

2.3 **Limits.** As between Brandzooka and User, (a) Brandzooka owns all right, title and interest in the Services, including future developments and enhancements and (b) User owns all right, title and interest in the ads and creatives that it provides. (Ownership of data is covered in Section 4 below.) Aside from the license granted immediately above, neither party grants the other any other license, express or implied, and each party reserves all rights not expressly granted hereunder. User will not attempt to circumvent any Platform security measure. User will use the Services only for its own use or for an advertiser or direct agent with which User has a direct relationship.

2.4 **Prohibitions.** User will not reproduce, distribute, modify, prepare derivative works of, translate, reverse engineer, reverse compile or disassemble the Platform or any portion thereof. Under no circumstances may User use the Platform for gathering competitive intelligence.

3. **PAYMENT.** Unless the parties agree otherwise in writing, Brandzooka will charge and User will pay in US dollars. Once User launches a Campaign, User grants Brandzooka permission to charge the credit card that User has on file for the amount that User entered in the Campaign budget field, plus any additional campaign fees. If User elects to run a recurring (daily, weekly, monthly) campaign, User’s credit card will be charged for the amount that was entered by User in the Platform on a recurring basis. User is

responsible for all campaign charges that are submitted under User's account.

If User selects a subscription plan, User grants Brandzooka permission to charge the credit card that User has on file for the amount of the subscription plan that User has signed up for. Subscription plans will, unless communicated otherwise by Brandzooka, be charged on a monthly basis. If User elects to opt out of a subscription plan, they are opting out of the plan at the time of the next scheduled payment- i.e. at the beginning of the following month of User's subscription. If User cancels a subscription plan on any day of the month, User understands they will not be entitled to a full or partial refund for any remainder of the month. Subscription plan charges are paid upfront for each month and once charged, are not refundable.

If User selects to run a campaign with an end date, and Brandzooka is unable to spend all of the allocated budget by the selected end date, User can elect to either a) extend the campaign length, or b) use the remaining campaign funds for a further campaign.

Under no circumstances can Brandzooka guarantee that a) a campaign's budget will be spent before the end date that User sets for a campaign, or that b) User's budget for a campaign with an end date will be equally spent throughout the campaign. User acknowledges that Brandzooka bids on inventory in accordance with Brandzooka's best established practices, and User recognizes that the rate at which Brandzooka is able to serve User's video ads is dependent on many factors and constantly fluctuates. Brandzooka does not guarantee any performance metrics and is not responsible for the performance and associated outcomes of any campaign.

#### **4. DATA.**

**4.1 Ownership.** As between Brandzooka and User and except for the licenses explicitly granted in this Agreement, (a) User holds all right, title and interest in all data and creative that User imports into the Platform ("User Data"), and (b) Brandzooka holds all right, title and interest in any data residing in the Platform ("Brandzooka Data") aside from data generated by the Services provided under this Agreement ("Services Data"). User must own rights to any URL address that is inserted into the platform as a re-direct URL for any video content that User publishes through Brandzooka. User takes full responsibility for any misuse or false representation through this feature. User must also own all legal rights to and all rights to distribute any content that User uploads to the Brandzooka Platform.

**4.2 Usage.** As to User Data, Brandzooka may use such data to provide Services to User under this Agreement. User also grants permission for Brandzooka to post video advertisements submitted by User through the platform on Brandzooka's public Vimeo channel and on Brandzooka's website, so long as Brandzooka does not edit the video ad in any way other than trimming it down to shorter lengths and/or adding Brandzooka-branded watermarks. User grants Brandzooka permission to use User's name, company name, and associated information (including video ads and creative submitted through the Brandzooka platform) for Brandzooka marketing purposes. As to Brandzooka Data, User may use such data solely in connection with its use of the Platform and other Services. To the extent that any Brandzooka Data is made available

to User on additional terms that are shown in the Platform (e.g., via a pop-up window), if User accepts such terms in the Platform user interface (which acceptance shall be in User's sole discretion) such additional terms shall be incorporated into this Agreement by reference. As to Services Data, each party may use the data generated by User's use of the Services as follows. User may use such data for any business purpose provided that (a) it complies with its privacy policy and (b) it does not disclose data that describes or reflects the performance of the Platform (or any other Services) to third parties except service providers who are under confidentiality restrictions. Brandzooka may use such data (a) internally for any business purpose and (b) externally if such data is aggregated with other data such that third parties cannot attribute the data to User. User acknowledges that Inventory Partners may have access to information about purchasers of their inventory.

6. **USER PRIVACY.** Each party's standard agreement with its partners (e.g., advertisers and other partners of User; publishers and other partners of Brandzooka) will require such partners to publish and comply with a legally sufficient privacy policy that fulfills the requirements of the DAA Self-Governing Principles found at [aboutads.info](http://aboutads.info). If User places its own ads through the Platform, User will also fulfill the requirements of this section. User shall ensure that its collection, storage and use of all user data, whether conducted through the Platform or otherwise, is strictly in compliance with all applicable laws, including any local law requirements related to use of IP addresses and behavioral information and COPPA. In addition, Brandzooka reserves the right to place the Brandzooka icon or watermark (or another partner icon) on the ads provided by User via the Platform.

## 7. **COMPLIANCE.**

7.1 Both parties will comply with all applicable laws and regulations. User will not use the Platform in connection with any ads or other digital content that are obscene or pornographic, or that depict illegal activity. In addition, User will not knowingly (a) use the Platform in connection with any ads that violate any law, regulation or third party right (including intellectual property and privacy rights) or that are deceptive or defamatory; or (b) distribute viruses or other malware (through the ads or any other mechanism).

7.2 Brandzooka may reject any ads that do not comply with the applicable Ad Standards. Brandzooka may immediately suspend any campaign or User account if Brandzooka reasonably determines that User is not complying with this Agreement or applicable Ad Standards, or is using the Platform in a manner that could damage the Platform or reflect unfavorably upon Brandzooka, its affiliates, or Inventory Partners. Brandzooka will promptly notify User in writing upon any such suspension.

10. **DISCLAIMER.** EXCEPT AS SET EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, REPRESENTATIONS, OR COVENANTS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. BRANDZOOKA MAKES NO REPRESENTATIONS REGARDING THE BENEFITS TO USER FROM THE PLATFORM, OR THAT THE PLATFORM WILL BE ERROR-FREE, ALWAYS AVAILABLE OR OPERATE WITHOUT

LOSS OR CORRUPTION OF DATA OR TECHNICAL MALFUNCTION. BRANDZOOKA OFFERS NO GUARANTEES ON AD PERFORMANCE METRIC OF ANY CAMPAIGN RUN THROUGH THE PLATFORM.

**11. LIMITATIONS ON LIABILITY.** (A) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES, WHETHER OR NOT SUCH DAMAGES ARE FORSEEABLE OR A PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. FURTHERMORE, USER ACKNOWLEDGES THAT BRANDZOOKA AND ITS AFFILIATES ARE NOT LIABLE FOR TRANSACTIONS EXECUTED BY THE PLATFORM AS A RESULT OF ERRORS MADE IN ENTERING INFORMATION INTO THE BRANDZOOKA PLATFORM BY USER OR ON USER'S BEHALF, INCLUDING INCORRECT PRICING, TARGETING OR BUDGETING INFORMATION. NOTWITHSTANDING ALL OF THE FOREGOING, NOTHING HEREIN SHALL LIMIT USER'S OBLIGATION TO PAY FOR MEDIA SPEND. BRANDZOOKA IS NOT LIABLE FOR ANY OUTAGES OR DOWNTIME OF THE PLATFORM.

**12. CONFIDENTIALITY.** "Confidential Information" means any information relating to or disclosed in the course of the Agreement, which is or should be reasonably understood to be confidential. The terms of this Agreement are the Confidential Information of each party (not to be disclosed by a party without the written consent of the other) and data regarding the performance of the Brandzooka systems and Services is Brandzooka Confidential Information. The receiving party will use the same care to protect Confidential Information as it uses for its own similar information, but in no event less than reasonable care, and will use Confidential Information only for the purpose of fulfilling its obligations under this Agreement. The receiving party will promptly return or destroy the other party's Confidential Information upon request of the other party. "Confidential Information" does not include information that (a) is or becomes part of the public domain through no fault of the receiving party; (b) was already in possession of the receiving party; or (c) was independently developed by the receiving party without violation of this Section. The receiving party may disclose Confidential Information if required to do so by law, if the receiving party provides the disclosing party with prompt notice and complies with any protective order imposed on such disclosure.

**13. MUTUAL INDEMNIFICATION.** Brandzooka shall indemnify, defend and hold harmless User and its directors, officers, employees and agents (and successors, heirs and assigns) (the "User Parties") against any liability, damage, loss or expense (including reasonable attorneys' fees and costs) incurred by the User Parties in connection with any third-party claim (a) that Brandzooka's proprietary technology that provides the Services, in the form provided by Brandzooka, infringes any US patent or other third party intellectual property right, or (b) arising out of or relating to any allegation that would constitute Brandzooka's breach of Sections 6 or 8. User shall indemnify, defend and hold harmless Brandzooka and its directors, officers, employees and agents, its and their respective successors, heirs and assigns (the "Brandzooka Parties") against any liability, damage, loss or expense (including reasonable attorneys' fees and costs) incurred by the Brandzooka Parties in connection with any third-party

claim arising out of or relating to (a) any allegation that would constitute User's breach of Sections 6 or 8 or anything in this Agreement; or (b) any advertisement, website or other material with which User uses the Platform (including the ads, landing pages and other materials of User and User's clients). The indemnified party will provide the indemnitor with prompt notice of any claim (provided that the failure to promptly notify shall only relieve indemnitor of its obligation to the extent it can demonstrate material prejudice from such failure) and at the indemnitor's expense, provide assistance reasonably necessary to defend such claim. The indemnitor will not enter into a settlement that would result in liability to the indemnified party without the indemnified party's prior written consent, which shall not be unreasonably withheld or delayed.

#### **14. MISCELLANEOUS**

14.1 Neither party will make any public statement relating to the Agreement without the prior written approval of the other, except that Brandzooka may include User's name and logo in its marketing, promotional materials and customer lists.

14.2 Brandzooka reserves the right to continually evolve the Platform and its services with or without notice, and to discontinue the Platform at any point.

14.3 This is the entire agreement of the parties relating to this subject and it supersedes all other commitments, negotiations and understandings. This Agreement cannot be amended except by a writing signed by both parties. This Agreement cannot be assigned without written consent of the non-assigning party, except that either party may assign this Agreement (a) to an acquirer of substantially all of that party's assets, stock or business by sale, merger or otherwise or (b) to a corporate affiliate. If any provision of this Agreement is unenforceable, that provision shall be re-interpreted to be as close to the parties' intent as legally possible and the validity of the remaining provisions will not be affected. The parties are independent contractors and there are no third party beneficiaries. Sections 2.5, 3 (until final payment), 5.1, 6, 8 and 10-14 will survive expiration or termination. Any claims (in court or arbitration) must be brought in the initiating party's individual capacity and not as a plaintiff or member in any class action or other similar proceeding.

14.4 A party's failure or delay to exercise any right will not operate as a waiver, nor will any single or partial exercise of any such right preclude any other exercise or the exercise of any other right, power or remedy.

14.5 All notices, demands and other communications provided for or permitted under this Agreement will be made in writing by personal delivery or by email, if to Brandzooka to the contact address set forth on its website, and if to User, to the contact information User maintains in User's Platform account.

14.6 Any action arising under or related to this Agreement will be resolved in the state or Federal courts. (and the parties hereby consent to personal jurisdiction) in the County of Denver, CO. The prevailing party is entitled to recover all reasonable fees, costs and

expenses of enforcing its rights, including reasonable attorneys' fees.

14.8 Multiple signature pages, signatures delivered via pdf copy or fax, and electronic signatures will all constitute originals and together constitute the same instrument.

14.9 Neither party is liable for failure or delay in performing its obligations because of causes beyond its reasonable control, including acts of God, terrorism, war, riots, fire, earthquake, flood or degradation or failure of third party networks or communications infrastructure.