

PHUZION MEDIA LIMITED – TERMS AND CONDITIONS OF SERVICE

1. DEFINITIONS

"**API**" means a set of functions and procedures allowing the creation of applications that access the features or data of an operating system, application or other service;

"**API key**" means a unique string of alphanumeric characters transmitted as part of an API request that authenticate the source of the API request;

"**Phuzion Media**" means Phuzion Media Limited a company registered in England and Wales under number 12647395 whose registered office is at 12 Hatherley Road, Sidcup, Kent, DA14 4DT;

"**Phuzion Media Service**" means the services to be provided by Phuzion Media being the provision of an Audio visual Commerce technology solution utilising Image Recognition and Time Stamping, thereby changing the way we see, hear and shop globally;

"**Client**" means a person (including a public officer, corporation, association or other organisation or entity, either public or private) who is rendered Services by Phuzion Media;

"**Client ID**" means a unique number assigned to each Client;

"**End User**" means a Client's customer;

"**Index Image**" means an image uploaded to the Phuzion Media Portal via the API which can be matched against, these include images uploaded and images extracted from uploaded videos;

"**Time Stamp**" means the precise moment a piece of audio or video is broadcast;

"**Intellectual Property Rights**" means all patents, copyright, design rights, domain names, designs (registered and unregistered), trade and service marks (registered and unregistered), rights in know-how, rights in relation to processes, rights in relation to databases, trade secrets, rights in confidential information and all other intellectual property rights throughout the world including:

all registrations and pending registrations relating to any such rights and the benefit of any pending applications for any such registrations; and

all reversions, extensions and renewals of any such rights;

"**Portal**" means Phuzion Media's web-based interface that is the Command Centre for the system, providing campaign and image management tools, data analytics and reporting tools;

"**Scan or Click or Tap**" means a request to the Phuzion Media API to identify an image or a click through for Radio, TV or Video;

"**Services**" means the Phuzion Media Service;

"**Terms**" means these Terms and Conditions;

"**Use**" means the right to load, execute, store, transmit, display ad copy (for the purposes of loading, execution, storage, transmission or display).

2. INTERPRETATION

2.1. The headings used in these Terms and Conditions are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of these Terms and Conditions.

2.2. Words denoting the singular shall include the plural and vice versa.

2.3. Any reference to "including" shall be without limitation.

3. CONDITIONS OF USE

3.1. By accessing or using the Services, the Client agrees to these Terms and Conditions.

3.2. The Client shall:

3.2.1. only utilise the Services in a manner which has been approved by Phuzion Media;

- 3.2.2. provide Phuzion Media with electronic access to the Client System as necessary for the purposes of providing the Services;
 - 3.2.3. use the Services at all times in accordance with all laws and regulatory requirements affecting both Phuzion Media and the Client; and
 - 3.2.4. provide such assistance, support and material as reasonably required by Phuzion Media to enable Phuzion Media to provide the Service to the Client's specifications and otherwise perform the Services.
- 3.3. In order to access certain Services, the Client may be required to provide certain information (such as identification or contact details) as part of the registration process for the Services, or as part of the continued Use of the Services. The Client undertakes that any registration information given to Phuzion Media will always be accurate and up to date and the Client agrees to inform Phuzion Media promptly of any changes to that information.
- 3.4. The Client undertakes that any End Users will comply with (and not knowingly enable them to violate) any applicable law or regulation or these Terms and Conditions.
- 3.5. The Client shall not store, distribute or transmit any virus or other material through or in connection with the Phuzion Media Services that is unlawful, harmful, threatening, blasphemous, defamatory, obscene, indecent, infringing, harassing or racially or ethically offensive, facilitates illegal activity, depict sexually explicit images or any other unlawful activity.
- 3.6. The Client will comply with all applicable law, regulation, and third-party rights (including without limitation laws regarding the import or export of data or software, privacy, and local laws). The Client will not use the Services to encourage or promote illegal activity or violation of third-party rights. The Client will not violate any other terms of service with Phuzion Media (or its affiliates).
- 3.7. The Client will only access (or attempt to access) the Services in accordance with instructions as laid down by Phuzion Media from time to time. If Phuzion Media (at its sole option) assign the Client developer rights (e.g. Client IDs) the Client must use them solely in conjunction with the Services. The Client agrees not to misrepresent or disguise either the Client's or End User's identity when using the Services.
- 3.8. The Client agrees that Phuzion Media may monitor the Client's use of the Services to verify compliance with these Terms. The Client acknowledges that Phuzion Media may suspend access to the Services or APIs without notice if Phuzion Media reasonably believes that the Client is in violation of the Terms.
- 3.9. When using the Services, the Client may not (or allow those acting on the Client's behalf to):
- 3.9.1. Sublicense a Service for use by a third party without the express permission of Phuzion Media.
 - 3.9.2. Create a service that functions substantially the same as the Services and offer it for use by third parties.
 - 3.9.3. Breach any third-party intellectual property rights or trademarks or otherwise hold itself to be the owner of such rights.
 - 3.9.4. Perform an action with the intent of introducing to any viruses, worms, defects, Trojan horses, malware, or any items of a destructive nature.
 - 3.9.5. Defame, abuse, harass, stalk, or threaten others.
 - 3.9.6. Interfere with or disrupt the Services or the servers or networks providing the Services.
 - 3.9.7. Promote or facilitate unlawful online gambling.
 - 3.9.8. Reverse engineer or attempt to extract the source code from the Services or any related software, except to the extent that this restriction is expressly prohibited by applicable law.
 - 3.9.9. Use the APIs for any activities where the use or failure of the APIs could lead to death, personal injury, or environmental damage (such as the operation of nuclear facilities, air traffic control, or life support systems).
- 3.10. The Client acknowledges that such credentials as passwords, keys and Client IDs are solely to be used by the Client to enable use of the Services and agrees to keep such credentials wholly confidential.

- 3.11. The Client agrees that Phuzion Media bears no responsibility for the Use of the Services by the End User and Phuzion Media acknowledges that it does not acquire any ownership of any intellectual property rights as a result of the Use of the Services by the Client or End User.
- 3.12. For the sole purpose of enabling Phuzion Media to provide, secure, and improve the Service, the Client hereby grants Phuzion Media a perpetual, irrevocable, worldwide, sublicensable, royalty-free, and non-exclusive license to Use content submitted, posted, or displayed to or from the APIs.
- 3.13. The Client acknowledges the Services are provided on a non-exclusive basis.

4. FAIR USAGE

The following is a non-exhaustive list of practices that would not be considered proper or legitimate Use of the Services:

- 4.1. The Client agrees not to
 - 4.1.1. publish, transmit or store on or via the Services any content or links to any content that Phuzion Media reasonably believes constitutes, depicts, fosters, promotes or relates in any manner to child pornography, bestiality, non-consensual sex acts, or otherwise unlawfully exploits persons under 18 years of age.
 - 4.1.2. publish, transmit or store any content or links to any content that is excessively violent, incites violence, threatens violence; and/or contains harassing content or hate speech, creates a risk to a person's safety or health, or public safety or health, or compromises national security or interferes with an investigation by law enforcement; and/or is defamatory or violates a person's privacy; and/or otherwise malicious, fraudulent or morally repugnant.
 - 4.1.3. publish, transmit or store any content that involves the unauthorised use of another party's Intellectual Property.
- 4.2. The Client agrees not to attempt to probe, scan, penetrate or test the vulnerability of the Phuzion Media system or network, or to breach the Phuzion Media security or authentication measures, whether by passive or intrusive techniques.
- 4.3. Phuzion Media reserves the right to deem any of the following as unfair usage:
 - 4.3.1. A request for an excessive number of API keys.
 - 4.3.2. Uploading a significant number of Index Images whilst maintaining a low number of monthly Scans.
 - 4.3.3. Use of the Service so as to create an artificially inflated number of scans.
 - 4.3.4. Use of the Service that, in the reasonable opinion of Phuzion Media, results in an adverse impact on the Service to any client.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1. Phuzion Media shall indemnify Client in full for any infringement of any of the Intellectual Property Rights licensed or made available to Client under these Terms or for any claim as to the validity of the IPR by any third party, to the extent Use of the IPR in accordance with the terms granted under these Terms causes any such infringement or claim and provided that Client shall at all times indemnify Phuzion Media in respect of any infringement of any IPR arising as a result of use by the Client or End User (or their respective associated companies, employees, agents, contractors or Clients) of such IPR outside of these Terms, or in conjunction with products or services not provided by Phuzion Media under these Terms.
- 5.2. The Client agrees to allow Phuzion Media to have control of any proceedings arising as a result of any infringement, threatened infringement or claim relating to the IPR and that it will make no admission as to liability nor agree to any settlement or compromise of any action without Phuzion Media's consent.
- 5.3. The Client further agrees that it will, at Phuzion Media's request and cost, lend Client's name to and offer such other assistance as Phuzion Media may reasonably request in relation to any proceedings to protect Phuzion Media's rights and interests, including those relating to the IPR. Any recovery obtained from such proceedings shall accrue solely for Phuzion Media's benefit although Phuzion Media will reimburse to Client any costs reasonably incurred by Client in assisting with such proceedings.

- 5.4. If an infringement, threatened infringement or claim occurs in relation to the Services, or if Phuzion Media considers that such a claim is likely to occur Phuzion Media shall have the right at its sole discretion to either:
- 5.4.1. procure for Client the right or licence to use of the Services free of the infringement claim; or
 - 5.4.2. replace or modify the Services to make it non-infringing; or
 - 5.4.3. terminate that part of the Services which relate to the infringement (or potential infringement); or
 - 5.4.4. if none of the options in clauses 5.4.1 to 5.4.3 is reasonably practical, terminate the provision of the Services.

6. PRIVACY AND CONFIDENTIALITY

- 6.1. All Clients domiciled in, or subject to the jurisdiction of, the European Union or the United Kingdom will ensure full compliance with all applicable privacy laws and regulations including the General Data Protection Regulation (EU 2016/679) ("GDPR") together with any national implementing laws, regulations and secondly legislation as applied, amended or updated from time to time in the United Kingdom or any other relevant jurisdiction , including the Data Protection Act 2018 ("DPA"); by any successor legislation to the GDPR and DPA; and any other directly applicable EU regulation relating to data protection and privacy.
- 6.2. All Clients who have an End User domiciled in, or subject to the jurisdiction of, the European Union or the United Kingdom will ensure full compliance by that End User with all applicable privacy laws and regulations including GDPR together with any national implementing laws, regulations and secondly legislation as applied, amended or updated from time to time in the United Kingdom or any other relevant jurisdiction , including the DPA; by any successor legislation to the GDPR and DPA; and any other directly applicable EU regulation relating to data protection and privacy.
- 6.3. Non-European and United Kingdom Clients will ensure full compliance by both themselves and any appropriate End User with all relevant laws and regulations in their respective jurisdictions to ensure the privacy and confidentiality of all relevant data.

7. TERMINATION

- 7.1. The Client may terminate its use of the Services by giving not less than thirty (30) days written notice to Phuzion Media.
- 7.2. Phuzion Media may terminate the provision of the Services to the Client by giving not less than thirty (30) days written notice to the Client.
- 7.3. Phuzion Media reserves the right to terminate the provision of the Services without notice should the Client breach any of the Terms.
- 7.4. The Client agrees that upon termination of the Terms for whatever reason the Client will immediately cease to use the Services and acknowledges that Phuzion Media has the right to communicate with any appropriate End Users to notify them of the cessation of Service.
- 7.5. When the Terms come to an end, those terms that by their nature are intended to continue indefinitely will continue to apply.

8. DISCLAIMER OF WARRANTY

- 8.1. The Services have been developed with, and are provided with, reasonable care and skill. Phuzion Media does not make any other promises or warranties about the Services and in particular does not warrant that:
- 8.1.1. The Services will provide uninterrupted or error free Use; or
 - 8.1.2. The Services will be uninterrupted or error free; or
 - 8.1.3. The Services will operate free from loss, corruption, attack, viruses, interference, hacking or other security intrusion and the Clients will be responsible for backing up its own system; or
 - 8.1.4. The Service will be error free, complete, accurate, available or uninterrupted.
- 8.2. Phuzion Media expressly disclaims any implied warranties as to merchantability or fitness for purpose except as set out in this Clause 8 or in the event that the Client exercises any applicable statutory right to refund or compensation.

- 8.3. In no case shall Phuzion Media be liable for any loss or damage caused by the Services where;
- 8.3.1. There is no breach of a legal duty of care owed to the Client by Phuzion Media; or
 - 8.3.2. It is not a reasonably foreseeable event; or
 - 8.3.3. Any loss or damage results from a breach of these Terms by the Client; or
 - 8.3.4. It is a result of Phuzion Media terminating the Service in accordance with these Terms; or
 - 8.3.5. It relates to a loss of income, business and / or profits or any loss of data or corruption of data in connection with the Client's use of the Services; or
 - 8.3.6. The loss or damage is indirect.
- 8.4. Phuzion Media makes no warranties with respect to use during free evaluation periods or during free trial periods.

9. LIMITATION OF LIABILITY

- 9.1. When permitted by law, Phuzion Media will not be responsible for lost profits, revenues or data or financial losses or indirect, special, consequential, exemplary or other damages.
- 9.2. To the extent permitted by law, the total liability of Phuzion Media for any claim under these Terms inclusive of any implied warranties is limited to the amount paid by the Client for the provision of the Services during the six months prior to the event giving rise to the liability. Phuzion Media may, at its sole option, supply Services without charge to discharge any or all of any such liability.
- 9.3. In all cases, Phuzion Media will not be liable for any expense, loss or damage that is not reasonably foreseeable.

10. INDEMNIFICATION

- 10.1 Unless prohibited by applicable law the Client will defend and indemnify Phuzion Media, and its affiliates, directors, officers, employees, and users, against all liabilities, damages, losses, costs, fees (including legal fees), and expenses relating to any allegation or third-party legal proceeding to the extent arising from the Client's or End User's misuse or violation of the Services.

11. MISCELLANEOUS PROVISIONS

- 11.1. In the event that any or any part of these Terms and Conditions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition or provision shall to that extent be severed from the remaining terms and conditions which shall continue to be valid and enforceable to the fullest extent permitted by law.
- 11.2. Phuzion Media's failure to exercise or enforce any right or provision of these Terms shall not be construed as a waiver of such right or provision.
- 11.3. Phuzion Media reserves the right to amend these Terms and Conditions from time to time to reflect changes in the law or to the Services. Changes will not apply retrospectively and, unless made for legal reasons or for addressing new functionality within the Services, will be subject to 30 days' notice. Changes made for legal reasons or for addressing new functionality will become effective immediately. In any event, the Client will be notified in writing of any changes to these Terms and Conditions.
- 11.4. These Terms and Conditions are provided by Phuzion Media only in the English language which will be paramount. Phuzion Media shall not be held liable for any errors made in translation to another language whether that translation is made on behalf of Phuzion Media or by the Client or End User themselves.
- 11.5. The parties hereby agree that these Terms and Conditions shall be construed in accordance with the laws of England and Wales and the Client accepts the exclusive jurisdiction of the courts of England and Wales.
- 11.6. Phuzion Media reserves the right to commence proceedings and enforce the Agreement in any jurisdiction.