

# TERMS OF USE

## 1. Definitions

1.1. In these terms of use, the following terms, indicated with a capital, whether single or plural, will have the following meaning:

<i>Agreement:</i>	the agreement between Video Intakes and Customer regarding the access to and use of the Service;
<i>Candidate Screening:</i>	the video recording and playback functionality of Video Intakes integrated into the recruitment process and system of Customer;
<i>Content:</i>	Video Intakes Content and User Content;
<i>Dashboard:</i>	the graphical user interface with which Customer can use the Employer Branding module;
<i>Employer Branding:</i>	a module of Video Intakes with which Customer can produce, manage and publish video content of Users through the Dashboard;
<i>Video Intakes:</i>	the general partnership Video Intakes, established and existing under the laws of the Netherlands, having its registered office in Amsterdam, registered with the Chamber of Commerce of the Netherlands under number 59906960;
<i>Video Intakes Content:</i>	all information, data or material in the form of images, videos, text and audio-visual material or any other content made available by Video Intakes and/or its licensor(s) through the Service whether or not on a customized basis;
<i>Intellectual Property Rights:</i>	all intellectual property rights and associated rights, including copyrights, trade mark rights, patent rights, design rights, trade name rights, database rights, and neighboring rights, as well as rights to knowhow;
<i>Service:</i>	the access to and use of the Application Process and/or Employer Branding, or other services Video Intakes provides Customer (and its Users), as set out in the Agreement;
<i>SLA:</i>	the service level agreement of Video Intakes
<i>Terms of Use:</i>	the underlying terms and conditions of Video Intakes pertaining to the use of the Service, which form an integral part of the Agreement;
<i>User:</i>	a natural or legal person who uses the Service, such as Customer's employees and/or candidates;

*User Content:* all information, data or material in the form of images, videos, text and audio-visual material or any other content submitted by a User through the Service.

## 2. General

- 2.1. These Terms of Use apply to all Agreements between Customer and Video Intakes and every use made of the Service by Customer and/or User. The applicability of any general -, purchase -, delivery - and/or other conditions of Customer are explicitly and expressly excluded and shall thus not apply, unless set out differently by Video Intakes expressly and in writing.
- 2.2. If at any time any provision of these Terms of Use is or becomes illegal, void or invalid for any reason whatsoever, such invalidity shall not affect the validity of the remainder of these Terms of Use and such invalid provision shall be replaced by another provision which, being valid in all respects, shall have an effect as close as possible to that of the replaced provision.

## 3. Service

- 3.1. Video Intakes shall grant Customer access to the Service and shall use reasonable commercial endeavors to keep the Service operational in accordance with the Agreement and the SLA.
- 3.2. If Customer complies in full with all obligations pursuant to this Agreement, Video Intakes will grant Customer and Users a limited, personal, revocable, non-exclusive, non-sublicensable and non-transferable right to use the Service and the Video Intakes Content.
- 3.3. Each and every use of the Service is at Customer's own risk and responsibility. Video Intakes has no knowledge of and/or interference with the User Content that is made available by Customer and/or User through use of the Service and/or the Dashboard. Customer is solely responsible and liable for User Content Customer and/or User provides. Video Intakes accepts no liability/responsibility whatsoever for any decisions made by Customer based on the Content in the Service. Customer acknowledges and agrees that Video Intakes does not have any influence over the User Content uploaded/processed by means of the Service.
- 3.4. Video Intakes is at all times, without in any way becoming liable to Customer, entitled:
  - a. to make procedural and technical alterations and/or improvements to the Service; and
  - b. to temporarily discontinue or limit the Service if, in its view, this is necessary, for example for purposes of preventive, corrective or adaptive maintenance. Video Intakes will notify Customer of the temporary unavailability or restricted use of the Service insofar and as soon as reasonably possible.
- 3.5. For the use of third party services Customer and User are bound by the conditions for use of these services. Video Intakes has no control over, and assumes no responsibility for the data, content, information, privacy policies, terms and conditions, and/or practices of any of these third party services.

## 4. Intellectual Property Rights

- 4.1. The Intellectual Property Rights relating to the Service, including Video Intakes Content and the Dashboard, are owned by Video Intakes and/or its licensors. Nothing in the Agreement constitutes the transfer of any Intellectual Property Rights from Video Intakes to Customer. Customer solely granted a license as described in Article 3.2.
- 4.2. Customer and User retain the Intellectual Property Rights relating to the User Content they make available through the Service. For the avoidance of doubt, this article 4 will survive termination of the Agreement.
- 4.3. Customer represents and warrants that it has all rights to grant the licenses as laid down in article 4.2 of these Terms of Use, without infringing or violating any third party rights, including but not limited to, any privacy rights, publicity rights, Intellectual Property Rights or any other proprietary rights. Customer indemnifies Video Intakes against any and all third party claims, based upon any alleged infringement of such third party rights in relation to the User Content.
- 4.4. Video Intakes does not claim any ownership rights of the User Content, has no obligation to review the User Content and can in no way be held responsible for the User Content uploaded through the Service.

## 5. Privacy

- 5.1. In case Video Intakes has access to personal data when performing the Agreement, and performing the Agreement requires Video Intakes to process personal data, Video Intakes will solely be acting as processor ("*verwerker*") within the meaning of the Dutch Personal Data Protection Act General Data Protection Regulation ("GDPR"). In that case, Video Intakes and Customer will conclude a data processing agreement within the meaning of article 28(3) GDPR.
- 5.2. Customer will ensure that the use of the Service is compliant with all applicable data privacy and data security laws and regulations within Customer's region and that it is consistent with generally accepted and commercially reasonable industry standards.
- 5.3. Customer agrees to indemnify, defend and hold harmless Video Intakes from any damages and losses resulting from third party claims arising from Customer's non-compliance with its obligations under the data privacy and security laws, Customer will adjust or initiate that locally delivered services comply with local privacy laws and regulations.

## 6. Fees and payment

- 6.1. Customer agrees to pay Video Intakes the fees as specified in the Agreement. All fees quoted and payable are in euro's and exclusive of turnover tax (VAT) and other government levies/taxes. Payments by Customer need to be done no later than 30 days after invoice date.
- 6.2. After the initial term of the Agreement, Video Intakes may increase the fees.
- 6.3. If Video Intakes has carried out work or performed other services that fall outside of the content or scope of the agreed work and/or services at request or with the prior consent of Customer, such work or services shall be paid for by Client in accordance with the agreed rates. If no rates have been agreed, Video Intakes's standard rates shall apply. Video Intakes shall under no circumstances be obliged to comply with such a request, and where it does comply, it may require Customer to enter into separate written agreement for this purpose.
- 6.4. Complaints regarding the Service and/or Support under this Agreement and/or the invoice do not suspend the payment obligation of Customer.

- 6.5. In case amounts under this Agreement are undisputed by Customer and not received by Video Intakes within the period as set forth in article 6.1 of this Agreement, Video Intakes reserves the right, without prejudice to any other rights and remedies and upon giving notice to Customer and a remedy period of five (5) business days, to: (i) suspend Services, including, without limitation, the supply of pending and future orders, and (ii) to charge legal interest on a day-to-day basis from the original due date.

## 7. Liability

- 7.1. Video Intakes's total, aggregate, cumulative liability for attributably failing ("*toerekenbare tekortkoming*") to correctly perform the Agreement (which includes a breach of any warranty), any unlawful act ("*onrechtmatige daad*") will be limited to direct damages only and shall never exceed the total amounts paid for the services in the twelve (12) preceding months of that particular calendar year.
- 7.2. Direct damages shall solely mean:
- a. property damages ("*zaakschade*");
  - b. reasonable expenses which Customer would have to incur to make Video Intakes's performance conform to the Agreement; this alternative damage shall not be compensated, however, if the Agreement is rescinded by or at the suit of Customer;
  - c. reasonable expenses incurred to determine the cause and scope of the damage, insofar as the determination relates to direct damage within the meaning of this Agreement;
  - d. reasonable expenses incurred to prevent or mitigate damage, insofar as Customer demonstrates that these expenses resulted in mitigation of direct damage within the meaning of this Agreement.
- 7.3. Video Intakes's liability for damages other than direct damages, arising out of, or in connection with the Agreement, such as, but not limited to indirect loss, consequential loss, loss of, loss of use and/or damage of any data, Content or software, loss of profit and loss of revenue, loss of business, loss of anticipated savings, or any other similar financial loss or loss of goodwill or reputation, damage as a result of claims from third parties or other incidental, indirect, punitive or exemplary damages of any kind, is excluded.
- 7.4. The limitations mentioned in the preceding paragraphs of this article 7 shall not apply if and insofar as the damage or injury is the result of intentional acts or omissions or wilful negligence by Video Intakes or its managers ("*own actions*").
- 7.5. No right to damages shall exist unless Customer notifies Flipbase in writing of the damage promptly after it has arisen. Any claim for damages against Flipbase shall become extinguished by the mere lapse of six (6) months after the claim has come into being.

## 8. Force majeure

- 8.1. In the event of force majeure, there will be no attributable failure in the performance of the Agreement by Video Intakes.
- 8.2. Force majeure includes, among other things, employees on sick leave and/or absence of employees who are crucial to the supply of the services, interruptions in the supply of electricity, strikes, riots, government measures, fire, natural disasters, floods, failure on the part of Video Intakes's suppliers, failure on the part of third parties engaged by Video Intakes, interruptions in connection to the internet (whether or not due to a DDoS attack),

hardware malfunctions, malfunctions in networks, including telecommunication networks, and other unforeseen circumstances.

- 8.3. If the force majeure continues for at least thirty (30) days, Video Intakes is entitled to terminate the Agreement without being obliged to pay any compensation for this termination.

## 9. Warranties and indemnities

- 9.1. As far as possible in the light of mandatory statutory provisions, Video Intakes expressly disclaims any and all explicit and implied guarantees, undertakings and warranties of any nature, including but not limited to guarantees, undertakings and warranties with respect to the quality, security, lawfulness, integrity and accuracy of the Service.
- 9.2. Video Intakes does not warrant that the Service will be accessible at all times and without interruptions or failures. Failures of the Service may be caused in part, but not exclusively, by failures in the internet or telephone connection or by viruses or errors/defects. Video Intakes will not be liable to Customer in any way for damage ensuing from or caused by the unavailability of the Service.
- 9.3. Video Intakes does not guarantee that the Service shall be effective, the use of the Service shall lead to certain results or that the Content provided through the Service shall be accurate, up to date and complete.
- 9.4. Video Intakes is not responsible for:
- a. the purchase and/or the proper operation of Customer's infrastructure;
  - b. loss, damage, inaccuracy and/or incompleteness of any Content provided through the Service;
  - c. transmission errors, malfunctions or non-availability of computer, Content, data or telecom facilities, including the internet;
  - d. any unauthorized use or attempted use of the Service;
  - e. making backup copies of any Content; or
  - f. the management, including checking the settings, the use of the Service and the manner in which the Content is used.
- 9.5. Video Intakes shall never be liable for any of the aforementioned acts or circumstances. Customer indemnifies Video Intakes against all damage and costs, including – but not limited to – damage resulting from (alleged) infringements of Intellectual Property Rights, claims by third parties, including Users, collection costs, the statutory commercial interest, loss of profits, penalties incurred and legal fees, which Video Intakes incurs or which result from a breach of the Agreement by Customer or an unlawful act.

## 10. Term and termination

- 10.1. This Agreement shall enter into force upon signing by both Parties and shall remain in force for the term as specified in the Agreement. In case the Agreement remains in force for an indefinite period of time, either Party may terminate the agreement by providing the other Party written notice of termination of the Agreement, taking into account a notice period of no less than three (2) months. In case the Agreement remains in force for a definite period of time, the Agreement shall be automatically extended for the same term on the same terms and conditions, unless terminated by either Party by providing the other Party written notice of termination of the Agreement, taking into account a notice period of no less than three (2) months.
- 10.2. Video Intakes may immediately terminate the Agreement, without becoming liable, upon written notification to Customer in case:

- a. Customer applies for a moratorium of payments, is declared bankrupt or otherwise ceases to meet its (financial) obligations;
  - b. Customer suspends or discontinues its business activities; or
  - c. of any change of control in Customer, its affiliates and/or shareholders.
- 10.3. Video Intakes may immediately (temporarily or permanently) suspend its service at any time, and without notice to Customer if Customer breaches this Agreement or otherwise engages in (unlawful) activities that are likely to cause liability to Video Intakes. Video Intakes will not be liable for any costs, expenses, or damages as a result of its termination of the Agreement.
- 10.4. Upon termination of the Agreement, for whatever reason, any and all rights granted to Customer under this Agreement will automatically terminate, and Customer will immediately cease any and all use of the Service, Video Intakes Content, Intellectual Property Rights and the Dashboard.
- 10.5. In the event of termination, any performance already delivered and the payment obligations related to it will not be the subject of reversal, unless Video Intakes is in default in relation to such performance. Amounts invoiced by Video Intakes before the termination in connection with anything that it has already performed or delivered in implementing the Agreement will continue to be owed and will become immediately due and payable at the time of the termination.
- 10.6. Provisions that by their nature are destined to survive termination of the Agreement will remain in full force after termination.

## **11. Miscellaneous**

- 11.1. Video Intakes may sell, lease, assign, or otherwise transfer in whole or in part the Agreement or any rights or obligations granted hereunder without the advance consent of Customer.
- 11.2. The Agreement shall be governed by the laws of the Netherlands.
- 11.3. All controversies, disputes or claims arising out of or relating to this Agreement or the breach thereof shall be exclusively and finally settled by the competent civil court in Amsterdam.