

**PUBLISHER– VIDEO
TERM AND CONDITIONS**

Last updated: March, 2018

These Publisher Terms and Conditions and the insertion order ("IO") that incorporates these terms and conditions (collectively, the "Agreement") is made and entered into effect as of the date of the last signature by the Parties on the IO (the "Effective Date") by and between Avantisteam Ltd. ("Avantis" or "Company"), and Publisher; Each referred herein as "Party" and collectively as the "Parties";

1. DEFINITIONS

- 1.1 **"Ads"** means advertisements including text, images, illustrations, links, URLs, offers, Ads, creative and/or graphic, video advertisements that are displayed on Properties through Platform (as defined hereunder).
- 1.2 **"Properties"** means the website/s owned, controlled, hosted and/or operated by Publisher to which the Publisher obtained all due licensing and/or rights required to integrate the Platform and to make the Ads available End Users (as defined below), as specified in the IO;
- 1.3 **"Company's Advertiser(s)"** means Company's upstream advertisers who provides Company with the Ads to be distributed in the Properties by Publisher.
- 1.4 **"Confidential Information"** means any information of the disclosing Party and/or its affiliates, whether or not in tangible form, of a private, secret, proprietary or confidential nature, or treated by the disclosing Party as such (including by marking such information as confidential or by informing the receiving Party in writing of such disclosure of Confidential Information), including but not limited to: (1) any deliverables provided by a Party under this Agreement; (2) any reports or invoices delivered by a Party under this Agreement; (3) information relating to a Party's business or financial affairs; (4) marketing strategies of a Party; (4) lists of customers, suppliers and service providers by or to a Party; or (5) any information of any third party as to which the disclosing Party owes a duty of confidentiality. Confidential information shall not include any information that the non-disclosing Party can verify with substantial proof: (1) is generally available or known to the public through no wrongful act of the non-disclosing Party; (2) was independently developed by the non-disclosing Party; or (3) was disclosed to the non-disclosing Party by a Third Party under no obligation of confidentiality to such Party; or (4) is required by law or regulation or pursuant to judicial or administrative process to be disclosed; provided, however, that in such case the Receiving Party shall promptly notify the Disclosing Party of the details of the requirement to disclose (with supporting documentation) and allow the Disclosing Party a reasonable time to oppose or otherwise limit such disclosure.
- 1.5 **"End User(s)"** means an individual, human end user who interacts with the Properties.
- 1.6 **"Fraudulent Activity"** means, in connection with the Eligible Traffic(as defined hereunder), any of the following: (a) using any automated program intended to generate non-human clicks (this may include by using scripts, web crawlers, spiders, bots or other similar non-human programs); (b) incentivizing any person to, or engaging in any activity that is likely to inflate the number of clicks; (c) using any practice of distribution that contains a virus, worm, malware, spyware, ransomware, crapware, trojan horse, or any other computer code, files or programs designed to interrupt, hijack, destroy or limit the functionality of any computer software, hardware, network or telecommunications equipment.
- 1.7 **"Intellectual Property"** means all patents, Trademarks and service marks, registered designs, design rights and copyright, moral rights, utility models, rights in databases and other protectable lists of information, domain names, trade secrets, inventions and know-how, trade and business names, domain names, get-ups, logos and trade dress (including all extensions, revivals and renewals, where relevant) in each case whether registered or unregistered and applications for registration of any of them and the goodwill attaching to any of them and any rights or forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world.
- 1.8 **"Trademarks"** means a Party's registered and unregistered trademarks, trade names and brands.
- 1.9 **"CPM"** means cost per thousand advertising impressions.

- 1.10 “**Net Revenue**” means revenue actually received by Company from Company’s Advertiser(s), after deduction of chargebacks and other payments to third parties and all other expenses made in connection of accruing the revenues, including but not limited to server fees paid by Company in each jurisdiction).
- 1.11 “**Rev-Share**” means that the Publisher will be entitled to agreeable percentage of the total Net Revenue that will be generated by Company under this Agreement.

2. SCOPE OF SERVICE

- 2.1 Company will provide Publisher with a video platform (the “**Platform**”) to be integrated by Publisher within the Properties to make Ads available to End Users and to generate revenues (the “**Eligible Traffic**”).
- 2.2 The Platform facilitates the placement of the Ads on the various spaces reserved for advertising within the Properties and the display of Ads on the Properties using video formats, including video content delivered into non-video content (“**outStream Formats**”) using formats provided by Company.
- 2.3 Publisher will be responsible for implementing the technical instructions provided by Company and to ensure proper functionality, placement of the Platform and shall be solely responsible for the Eligible Traffic.

3. LICENSE

- 3.1 Subject to the terms and conditions of this Agreement Company hereby grants and Publisher hereby receives a limited, revocable, non-exclusive, non-assignable, non-transferable, non-sublicensable license, during the term of this Agreement and only in the Properties to the extent permitted hereof to provide the Eligible Traffic.
- 3.2 Licensor owns or has obtained all rights to provide the Eligible Traffic in the Properties as set out in this Agreement.
- 3.3 Any right which is not expressly granted herein is expressly reserved by Company and Publisher may not make any use of the Platform and the Ads, or any part thereof, in any manner not expressly permitted by this Agreement. Publisher is fully responsible for all activities that are undertaken under Publisher’s license to perform the Eligible Traffic, regardless of whether such activities are undertaken by the Publisher or a third party.
- 3.4 Publisher may not: (a) sell, transfer, sublicense, lease, lend, disclose access to, rent or otherwise distribute the Platform or the Ads to any other person or entity;(b) disassemble, decompile, circumvent, attempt to derive the source code of, or otherwise reverse engineer the Platform or any part thereof; (b) alter, create derivative works of or modify or otherwise change the Ads in any manner, whatsoever;(c) distribute Ads or use the Platform in any unlawful or fraudulent manner, for any unlawful purpose, or in any manner inconsistent with this Agreement or with any applicable laws, regulation or policies; (d) act in a fashion that may harm or dilute Company’s reputation or good will.

4. CONSIDERATION AND REPORTING

Subject to the terms and conditions of this Agreement the payment mechanism will be as follows:

- 4.1 In consideration of the Eligible Traffic performed by the Publisher, Company will pay Publisher the fees actually received by Company from Company’s Advertiser(s), according to the agreed Pricing Model set forth in the IO.
- 4.2 The Consideration will be calculated solely based upon Company’s records. During the Term hereof, Company will provide Publisher with reports where Publisher will be able to view measurements or statistics regarding performance of the Eligible Traffics (the “**Reports**”). Publisher acknowledges that the full Reports are based upon third party reports and subjected to such third party adjustments, thus occasion delays and adjustments may occur and are out of Company’s control and responsibility. All Reports may be updated and adjusted up to thirty (30) days back. Company shall not be liable for any unavailability or inaccuracy, temporary or otherwise, of the Reports.
- 4.3 If Publisher disputes the information detailed in a Report, Publisher will provide Company with a written notice that will specify the reasons for such dispute (the “**Dispute Notice**”), by no later than two (2) business

days as of receipt of such Report. Following receipt of a Dispute Notice, Company will examine and respond to Publisher with a reasonable time period with the results of such examination. Company will have the right to audit Publisher's tracking system and records, in order to resolve any dispute. The parties will work together in good faith to settle any such dispute. In case the Parties do not reach common ground, with reasonable effort Company's reporting will prevail.

- 4.4 All payments under this Agreement will be made in U.S. Each party shall bare its own taxes, duties and charges imposed or that may be imposed by any applicable governmental agency in connection with the Agreement and each party's performance hereunder, including without limitation, sales, use, value added, and any other taxes, customs and/or import duties. Company may chargeback any amount it made to Publisher under this Agreement, or withhold any due amounts to Publisher, in case of chargebacks or other adjustments made by Company's Advertisers with regards to the distribution of the Ads by Publisher.

5. OWNERSHIP AND PROPRIETARY RIGHTS

- 5.1. Each Party retains all right, title, and interest in and to its Intellectual Property rights and software and/or property and nothing contained in this Agreement will grant either Party any right, title or interest in the trademarks, trade names, service marks, copyrights or other Intellectual Property rights of the other Party other than the limited license grants provided herein.
- 5.2. Without derogating from the generality of the foregoing, Company retains all ownership and Intellectual Property rights in the Platform and in any deliverables, software, reports, documentation and other materials furnished in connection with its performance under this Agreement.
- 5.3. Company may use Publisher's trade name and/or logo for the purpose of disclosure to End Users as applicable and needed by law regulation or industry best practices.
- 5.4. Nothing hereunder may be construed as granting any right, warranty or license by implication or otherwise under any patent, copyright, know-how or design rights, or other form of protection of industrial or Intellectual Property.

6. REPRESENTATIONS & WARRANTIES

- 6.1 Each Party hereby represents and warrants that: (a) it shall comply with all applicable law, regulation and industry best practices with regards to its performance and obligations under this Agreement; (b) it has the full right, power, and authority to enter into this Agreement, to discharge its obligations hereunder, and to grant the licenses granted hereunder; (c) The execution of this Agreement and the performance of its obligations and duties hereunder does not violate any agreement to which it is a party or by which it is otherwise bound; (d) When executed and delivered, this Agreement will constitute the legal, valid and binding obligation of each Party, enforceable against each Party in accordance with its terms;
- 6.2 In addition to the above mentioned, Publisher hereby represents and warrants that:
- 6.2.1 (1) It owns or has obtained all rights to integrate the Platform and distribute the Ads in the Properties as set out in this Agreement; (2) Publisher (including the Properties where applicable) will act in good faith, in accordance with bona fide business practices, in compliance with the terms of this Agreement; (3) Publisher, the Eligible Traffic and the Properties will not (either directly or indirectly) use the Platform and the Ads in any manner that, (i) reflects or engages with any Fraudulent Activity (including for the purpose of generating fraudulent or fraudulent revenues; (ii) may be considered as a violation of third party rights (including Intellectual Property Rights) or (iii) may be considered as or together with any material which is illegal or questionable (including deceptive, false or misleading material); and; (4) Publisher will make no representations, warranties or agreements on behalf of Company and/or its affiliates; (5) If during the campaign Publisher becomes aware of any restriction with respect to the usage, distribution or placement of any of the Platform and the Ads it shall immediately notify Company and cease the use of such Platform and the distribution of the Ads.
- 6.2.2 Company will not be responsible or otherwise liable whatsoever for any breach or violation of applicable laws resulting from the Eligible Traffic.
- 6.2.3 Publisher hereby acknowledges and agrees that (i) any violation of this section 6.2, shall constitute a material breach that may cause to an immediate termination of this Agreement (or specific campaign) by Company without derogating from Company's right to seek for equitable relief (including without

limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this agreement and to take any measure it sees fit to prevent or cure any damage caused by Publisher's conduct.

- 6.2.4 Publisher will disclose and make available to End Users (via the Properties terms of service) about the use of the Platform as a third party services and may link End Users to Company Policies.
- 6.3 Company may utilize third party service providers to provide certain storage services and related tools and/or programs ("Third Party Services"). As such, the services in whole or in part, may be unavailable due to causes beyond the control of Company. By entering to this Agreement with Company, Publisher agree that Company shall not be held liable or responsibility whatsoever for any loss or damage arising from unavailability of the Platform or the Ads resulted from a failure of Third Party Services outside the control of Company.

7. TERM AND TERMINATION

- 7.1 This Agreement shall commence upon the Effective Date and will continue until terminated by either party according to this section (the "Term").
- 7.2 Either Party may terminate this Agreement upon 72 hours' written notice (which can be made in a form of e-mail acknowledged by both Parties). Notwithstanding the aforementioned, Company may terminate this Agreement immediately by providing Publisher with a written notice, if: (a) Publisher breached any of its obligations, representations and/or warranties set forth in the Agreement; (b) Publisher engages in any action that, in Company's sole discretion, reflects poorly on Company, on the Eligible Traffic or on Company's partners or otherwise disparages or devalues Company's reputation or goodwill; or (c) Company determines, at its reasonable judgment, that it is commercially impractical for it to continue performing under this Agreement as a result of legal, regulatory, business and/or technical considerations.
- 7.3 Upon the termination of this Agreement, for any reason: (a) all rights and licenses granted herein shall be terminated immediately; (b) Publisher's right to use the Platform and distribute the Ads or any part thereof shall cease immediately; (c) Publisher shall promptly return to Company, or destroy and/or delete and certify the destruction of any deliverables provided by Company (or portion of them) at its possession at such time, and either Party shall return to the other party any Confidential Information in its possession.
- 7.4 Publisher acknowledges and agrees that Company will not be liable to Publisher or any other person or entity for damages resulting from the termination of the Agreement.
- 7.5 Following the termination of the Agreement, any provisions of the Agreement that in order to fulfill their purpose need to survive the termination of the Agreement (including Sections 1 (Definitions), 5 (ownership and proprietary rights), 8 (Confidentiality), 9 (Limitation of Liability), 10 (Indemnification), 11 (General) and this section 7.5), shall survive.

8. CONFIDENTIALITY

- 8.1 During the Term of this Agreement and thereafter, each Party agrees: (a) not to disclose the disclosing Party's Confidential Information to any third party other than to its officers, employees, advisors or consultants (collectively, the "Representatives") and only on a "need to know" basis and provided that such Representatives are bound by written agreement to comply with the confidentiality obligations contained herein; (b) not to use any of the disclosing Party's Confidential Information for any purposes except to carry out its rights and responsibilities under this Agreement; and (c) to keep the disclosing Party's Confidential Information confidential using at least the same degree of care it uses to protect its own confidential information, which shall in any event not be less than a reasonable degree of care.
- 8.2 The Parties agree that the content and existence of this Agreement and the nature of the relationship between the parties shall not be disclosed to a third party without the mutual written consent of both parties prior to such disclosure.
- 8.3 This Confidentiality section shall survive any termination or expiration of this Agreement.

9. LIMITATION OF LIABILITY

- 9.1 The Platform, the Ads and the Company's Trademarks are provided by Company on an "as-is" and "as available" basis. Except as expressly provided in this Agreement and to the fullest extent permitted by applicable law Company disclaims all warranties of any kind, expressed, implied, statutory or otherwise, including without limitation any implied warranty of merchantability, fitness for a particular purpose, non-infringement of intellectual property rights, and any implied warranties arising from course of dealing or course of performance. Company does not warrant that the Platform, the Ads, and/or any content, technology or services available therein will be provided without interruptions or shall be error free or that any errors will be timely fixed; or that Publisher will profit or derive any benefit from Publisher's use of the Platform and the Ads.
- 9.2 Company will have no warranty for any Third Party Services and Publisher uses of the Platform is at its own responsibility and risk.
- 9.3 In no event will Company or its Representatives be liable for any consequential, indirect, special, exemplary or punitive damages arising out of or related to this Agreement, including but not limited to damages for lost data, lost profits or revenues, loss of goodwill, service interruption, computer damage or system failure, software or costs of procurement of substitute goods or services, arising out of or in connection with this Agreement based on contract or tort (including products liability, strict liability and negligence), and whether or not Company should have reasonably foreseen or should have been aware or advised of the possibility of such damage and notwithstanding the failure of essential purpose of any limited remedy stated herein. If applicable law limits the applicability of this limitation of liability section, then Company's liability shall be limited to the maximum extent possible by applicable law.
- 9.4 The total liability of Company under this Agreement shall not exceed the total amount of fees made under this Agreement during the month preceding any claim under which such liability shall arise.
- 9.5 Notwithstanding anything in this Agreement to the contrary, Publisher assumes all risk and liabilities related to the Properties and Company or Company's Partners are free from all liabilities which may arise from or related to the Properties.

10. INDEMNIFICATION

- 10.1 Each Party (the "Indemnitor") shall indemnify, defend, and hold harmless the other Party (the "Indemnitee") from and against any claim, action, loss, liability, damage, penalty, cost or expense (including reasonable legal fees for attorneys) incurred in connection with any third party claim that resulted from an infringement or exploitation of third intellectual property rights, by Indemnitor. Nevertheless, Publisher shall indemnify, defend, and hold harmless Company from and against any third Party's claim, action, loss, liability, damage, penalty, cost or expense that Company may suffer or incur as a result of or in connection with a breach of Publisher's obligations, representations, warranties or covenants made in this Agreement.
- 10.2 Each Party (the "Indemnifying Party") will fully cooperate with the other Party (the "Indemnified Party") in the defense and settlement of any third party claim, and Indemnified Party's demand will assume responsibility for the investigation, preparation, defense, trial and settlement of such claim, with the express provision that Indemnifying Party will not settle the claim without Indemnified Party's prior written explicit approval.
- 10.3 The provisions of this section shall survive the termination of this Agreement.

11. GENERAL

- 11.1 Relationship of Parties. The Parties are independent contractors and will so represent themselves in all regards. Nothing herein shall be deemed to create the relationship of employer-employee, agency, joint venture or partnership between the parties or between either of the parties and any third party.
- 11.2 Assignment. Neither this Agreement nor any interest, right or obligation herein may be assigned by Publisher without the prior written consent of Company, of which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Party may assign any of its interests, rights and obligations under

this Agreement without the consent of the other party to a subsidiary or sister-company or in the event of a merger, consolidation, change of control or sale of all or substantially all of the Party's assets, provided that the third party undertakes the assigning Party's rights and obligations under this Agreement. Any assignment or transfer not specifically permitted herein shall be null and void. This Agreement shall be binding upon and insure to the benefit of each of the parties and their respective successors and permitted assigns.

- 11.3 Entire Agreement. This Agreement, together with the IO, annexes sets forth the entire agreement of the Parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to the subject matter hereof. Neither Party has relied upon any such prior or contemporaneous communications.
- 11.4 Amendments. No modification or other amendment to this Agreement shall be valid unless reduced to writing and signed or acknowledged by authorized representatives of both Parties.
- 11.5 Severability. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 11.6 No Waiver. No waiver of any rights and/or remedies arising under this Agreement shall be effective unless executed in writing and signed by the Party against whom such waiver is sought to be enforced. The non-enforcement of any right and/or remedy with respect to a breach of any provision herein contained shall not be deemed to be a waiver of such rights and/or remedies, or of the enforcement of any rights and/or remedies with respect to any subsequent breach of the same or other provisions.
- 11.7 Notices. All Notices pursuant to this Agreement will be sent to the contacts specified in the IO or to other such individuals as either Party may specify in writing.
- 11.8 Conflict in Terms. In the event of any conflict or inconsistency between these terms and conditions and any Insertion Order, the terms of the Insertion Order shall prevail.
- 11.9 Force Majeure. Neither Party shall be liable for any delay or failure in performance due to events outside the defaulting Party's reasonable control, including, without limitation, acts of God, disasters, terrorism, fire, or other circumstances beyond its reasonable control. The obligations and rights of the defaulting Party shall be extended for a period equal to the period during which such event prevented such Party's performance.
- 11.10 Publicity. It is agreed that Company at its sole discretion and without the prior approval from Publisher, retains the right to publish or otherwise make public the existence or subject matter of this Agreement or the transactions contemplated hereby, and use Publisher's trade name and/or logo for marketing purposes.
- 11.11 Jurisdiction and Governing Law. This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Israel, without regard to conflict of laws or to the actual state or country of incorporation or residence of the parties. The parties irrevocably consent to the exclusive jurisdiction of the competent courts of the Tel Aviv district in connection with any action arising under this Agreement.
- 11.12 Arbitration. Notwithstanding the foregoing, Company has the sole discretion of electing to settle any disputes and actions arising out of this Agreement by binding arbitration before a single arbitrator (the Arbitrator) whose decision rendered in writing, shall be final, conclusive and binding on the parties. The governing law and the rules for arbitration shall be those of the state at which Company elects to submit to arbitration.