

**dailymotion** advertising  
terms & conditions **2016**

# DAILYMOTION

## TERMS AND CONDITIONS

In these Terms, the following expressions shall, unless the context otherwise requires, have the following meaning:

### 1. DEFINITION

**"Ad(s)"** or **"Advertising(s)"** mean(s) any advertisement material promoting the supply of goods and services that the Buyer wishes to insert within the Ad Placement specified in the IO on the DAILYMOTION Properties in accordance with the Terms.

**"Ad Placement(s)"** mean(s) any link, banner, video or any other advertising placements format which is dedicated to host the Ads on the DAILYMOTION Properties as specified in the IO.

**"Ad Tag"** means the HTML code (most often in JavaScript or I-Frame) used to call and display the Ad(s).

**"Advertiser"** means the advertiser of the goods and/or services referred to in the Ads and designated in the applicable IO.

**"Affiliate(s)"** mean(s), with respect to either party, any corporation, firm, partnership, person or other entity, which directly or indirectly owns, is owned by or is under common ownership with such party to the extent of at least 50% of the equity having the power to vote on or direct the affairs of the entity, and any person, firm, partnership, corporation or other entity actually controlled by, controlling or under common control with such party.

**"Agency"** means the advertising agency, the media buyer or other entity, named in the IO, representing the Advertiser and who has the authority to enter into these Terms and to execute an IO on behalf of the named Advertiser.

**"Buyer"** means the person or entity placing and signing the IO (whether it is the Advertiser or the Agency) and billed by DAILYMOTION in accordance to terms set forth in Section 4 of the Terms.

**"Campaign End Date"** means the last date for publication of the Ads (as specified in the IO) onto the Ad Placement.

**"Campaign Start Date"** means the first date of publication of the Ads (as specified in the IO) onto the Ad Placement.

**"Campaign Duration"** means the period between the Campaign Start Date and Campaign End Date (inclusive of both dates).

**"Campaign Specifications"** means the Campaign End Date, the Campaign Start Date, and the Campaign Duration, together with the Campaign Total Cost, and any specifications stated in the IO regarding Ad formats, and the targeting and/or the delivery of the Ads on the DAILYMOTION Properties.

**"Campaign Total Cost"** means the CPM, CPC together with any other Advertising campaign cost specified in the IO.

**"CPC"** or **"Cost-per-click"** means the cost based on the number of clicks a specific Ad receives during the Campaign Duration on the DAILYMOTION Properties.

**"CPM"** or **"Cost-per-thousand"** means the cost per 1000 Impressions of the Ad during the Campaign Duration on the DAILYMOTION Properties.

**"DAILYMOTION Properties"** means any websites, mobile websites, applications, mobile applications, players, owned or managed by DAILYMOTION as of the execution of the IO, that is made available on any known or future device including tablets, game consoles, connected TV, portals.

**"DAILYMOTION"** means Dailymotion S.A, a French company, with offices located 140 Boulevard Maiesherbes 75017 Paris, France.

**"Deliverable(s)"** means the type and amount of Impressions, clicks and/or other desired actions to be served on the DAILYMOTION Properties as agreed between the parties in the IO.

**"Impression(s)"** means the metric used to measure views of an Ad inserted on the DAILYMOTION Properties.

**"Insertion Order" or "IO"** means the insertion order agreed to between DAILYMOTION and the Buyer and returned duly executed by the Buyer to DAILYMOTION, in order for Ads to be placed on the Ad Placement in accordance with these Terms and the Campaign Specifications.

**"Laws"** means all applicable federal, state and local laws, ordinances and regulations.

**"Policies"** means DAILYMOTION's advertising criteria or specifications, including content limitations, technical specifications, privacy policies, user experience policies, policies regarding consistency with DAILYMOTION's public image, community standards regarding obscenity or indecency (taking into consideration the portion(s) of the DAILYMOTION Properties on which the Ads are to appear), other advertising policies, and material due dates.

**"Technical Specifications"** means the technical specifications for the display of advertising on the DAILYMOTION Properties, established by DAILYMOTION and which may be amended at any time by DAILYMOTION at its sole discretion.

**"Terms"** means these terms and conditions.

**"Third Party"** means an entity other than the parties to these Terms, their respective Affiliates, and each of their respective directors, officers, employees and agents.

# DAILYMOTION

## TERMS AND CONDITIONS

### 2. INSERTION ORDERS AND INVENTORY AVAILABILITY

#### 2.1 Validity and conditions of the IO

- a.** From time to time, the parties may execute an IO under which DAILYMOTION will deliver Ads provided by the Buyer to be displayed onto the Ad Placements in accordance with these Terms.
- b.** The IO is established in a form provided by DAILYMOTION and will be binding only if accepted as provided in Section 2.1(c) below.
- c.** Acceptance of the IO and these Terms will be made only upon the execution and return of the IO to DAILYMOTION by the Advertiser himself or the Agency placing the order with DAILYMOTION (i.e. by the Buyer).
- d.** Each IO shall specify: (i) the identity of the Advertiser for whom the campaign is executed and billed; (ii) the identity of the Agency placing the IO on behalf of the Advertiser, in the event that it is not the Advertiser itself that is executing the IO; (iii) the type and name of the product(s) and/or service(s) to be promoted (if available); (iv) the Deliverables; (v) the price(s) for such Deliverables; and (vi) the Campaign Specifications.
- e.** The IO executed by the Buyer is strictly personal and cannot be assigned, even partially to a Third Party without DAILYMOTION's express, prior written approval. Unless otherwise agreed in the IO, DAILYMOTION does not give under these Terms, any exclusivity to the Buyer and does not guarantee that a competitor of the Advertiser will not be present in an adjacent advertising placement during the Campaign Window.
- f.** The IO gives DAILYMOTION the right to market, reproduce, display, transmit and perform the Ads on the Ad Placement and use Advertiser's name and its trademarks on any advertising and promotional activities directed to DAILYMOTION's current or potential clients. The IO gives DAILYMOTION's users the right to access the Ads together with any content or material linked to the Ads.
- g.** Buyer shall not resell the Ad Placement purchased in the executed IO to any third parties other than the Advertisers as defined herein, being agreed that any DSP, adnetwork or adexchange platform are expressly excluded from the definition of authorized Advertisers.

#### 2.2 Inventory availability

DAILYMOTION will make commercially reasonable efforts to notify the Buyer within two (2) business days of the receipt of an IO executed by the Buyer if the specified Deliverables are not available.

#### 2.3 Revisions or modifications of the IO

- a. By the Buyer:** Revisions or modifications requested by the Buyer to an executed IO will not be binding unless accepted either by email or in writing by DAILYMOTION. Any revision or modification requested by the Buyer shall be addressed to

DAILYMOTION at least 24 business hours before the earlier of (i) the Campaign Start Date or (ii) the display of the first Ad Impression by DAILYMOTION, unless otherwise agreed upon in the IO.

- b. By DAILYMOTION:** DAILYMOTION will use commercially reasonable efforts to provide the Buyer with at least five business days prior notification of any material changes to the Ad Placement that would change the target audience or significantly affect the size or placement of the Ads specified in the affected IO. Should such a modification occur with notice, as Buyer's sole remedy, Buyer may immediately cancel the remainder of the IO without penalty within the five-day notice period. If DAILYMOTION has failed to provide such five day prior notice, Buyer may cancel the remainder of the IO within 30 days of such modification, and in such case shall not be charged for any affected Ads delivered after such modification. In any event, the parties agree that DAILYMOTION will invoice the Buyer on the actual Ads' cost delivery and not the Campaign Total Cost provided for in the IO if applicable.

#### 2.4 Ad servers

- a.** The parties agree that all campaign delivery data and statistics including but not limited to traffic and Impressions will be provided according to numbers recorded by the DAILYMOTION ad-server.
- b.** In the event DAILYMOTION agrees at Buyer's request to use a Third Party ad server as specified in the IO during the Campaign Duration, all campaign delivery data and statistics (where relevant) will be provided according to numbers recorded by the Buyer, in the event of any discrepancies between data recorded by DAILYMOTION and data recorded by the Buyer the parties shall negotiate in good faith to resolve such discrepancies.

In such event, the Buyer may not substitute, change or replace the Third Party ad server specified in the IO without DAILYMOTION's prior written consent. The Buyer and DAILYMOTION agree to give reciprocal access to relevant non-proprietary statistics from their own ad servers, or if such is not available, provide weekly Ad Placement reports to each other.

# DAILYMOTION

## TERMS AND CONDITIONS

### 3. AD PLACEMENT AND POSITIONING

**a.** DAILYMOTION will submit to the Buyer or otherwise make electronically accessible to the Buyer the Technical Specifications related to the Ad Placement within two business days of execution of the IO by DAILYMOTION. Buyer undertakes to comply with all Technical Specifications being agreed that DAILYMOTION shall not be liable for any delivery issue based on the nonconformity of Buyer's Ads to the Technical Specifications.

In the event that DAILYMOTION modifies the Technical Specifications of the already purchased Ad Placement after that two business days period following Buyer's execution of the IO, Buyer may suspend delivery of the affected Ads for a commercially reasonable time in order to either: i) request that DAILYMOTION resize the Ads at DAILYMOTION's cost and with final creative approval of the Buyer, within a reasonable time period to fulfill the guaranteed levels of the IO; or ii) accept an alternate or comparable replacement for the affected Ads; or (iii) if the parties are unable to negotiate an alternate or comparable replacement in good faith within five business days from the date of modification, immediately cancel the remainder of the IO for the affected Ads without penalty for either of the parties.

**b.** DAILYMOTION will comply with the IO, including all Campaign Specifications, and will create a reasonably balanced delivery schedule. DAILYMOTION will serve, within the scope of the IO, the Ads onto the DAILYMOTION Properties that are specified in the IO when an Internet user visits such DAILYMOTION Properties. Except otherwise expressly agreed by DAILYMOTION in writing and specified in the IO, the Ad Placements on the DAILYMOTION Properties are subject to the sole discretion of DAILYMOTION.

**c.** Ad delivery shall comply with any Campaign Specifications stated in the IO (if any). In the event that Ad delivery does not comply with any Campaign Specifications stated in the IO, Buyer will immediately notify DAILYMOTION of such deviations from the Campaign Specifications. As Buyer's sole remedy, DAILYMOTION will make commercially reasonable efforts to correct such deviations within 24 hours of such notification. In the event that such corrections, if made, would materially and adversely impact the IO, the parties agree to negotiate in good faith mutually agreed changes to the IO that would address such impacts. In the event that the parties cannot reach an agreement on such changes within five business days from the implementation of such correction, the Buyer or DAILYMOTION may, upon the conclusion of such five business day period, immediately cancel such IO, without penalty for either party and in such event the parties agree that DAILYMOTION will invoice the Buyer on the actual Ads' cost delivery and not the total agreed cost provided for in the IO.

### 4. PAYMENT AND PAYMENT LIABILITY

#### 4.1 Invoices

**a.** DAILYMOTION shall invoice the Buyer on a monthly basis with respect to the IO. For CPM and CPC campaigns, the invoices will be based on the actual Ads delivered. For fixed price campaigns, the amount of the invoices will be prorated according to the number of days the campaign was active during a given month.

**b.** Invoices will be sent to Advertiser's or Agency's (where applicable) billing address as set forth in the IO, and the invoice will include information reasonably specified by Agency (when applicable) or Advertiser such as the IO number, Advertiser's name, brand name or campaign name, and any number or other identifiable reference stated as required for

invoicing on the IO.

**c.** In accordance with the French Law n°93-122 dated 23 January 1993 ("*Loi Sapir*"), and in the event Buyer is the Agency, DAILYMOTION may directly bill the Advertiser(s) and apply the rebates, discounts and generally speaking, all benefits of any kind granted as per the IO to Advertiser(s), and Buyer will ensure that all such rebates, discounts and other benefits will benefit to Advertiser(s) only.

#### 4.2 Payment Date

**a.** The Buyer will make payment of the Campaign Total Cost and any applicable taxes ("**Fees**") in one of the following currencies: (i) Pound Sterling (£); or (ii) Euros (€); (iii) US Dollars (USD) or (iv) CA Dollars (CAD) within 30 days from the date of the corresponding invoice sent by DAILYMOTION, or as otherwise stated in a payment schedule set forth in the IO ("**Payment Due Date**").

**b.** DAILYMOTION reserves the right to charge interest on all sums which remain outstanding after the Payment Due Date at a rate of 1.5% per month or the maximum permitted by law, whichever is lower.

**c.** The Fees will be deemed to have been paid only upon receipt of the funds by DAILYMOTION.

**d.** DAILYMOTION may notify the Buyer that it has not received payment in such thirty-day period and whether it intends to seek payment directly from the Buyer pursuant to Section 4.3, and may do so five business days after providing such notice.

#### 4.3 Payment Liability

**a.** When the Buyer is the Advertiser, the Advertiser is liable for payment of the Fees in the terms set forth in Section 4.2. In the event of non-payment of the Fees by the Advertiser on the Payment Due Date, DAILYMOTION reserves the right (i) to apply the penalties set forth in Section 4.2 (b) until the full payment of the Fees by the Advertiser and (b) to refer to Third Party debt collectors to seek and collect the payment of the Fees and penalties and (c) to withhold further IOs from the same Advertiser pending receipt of Fees.

**b.** When the Buyer is the Agency, the Agency is liable for payments of the Fees under the terms set forth in Section 4.2. In the event of the non-payment of the Fees, prior to referring such non-payment of the Fees to Third Party debt collectors, DAILYMOTION reserves the right to seek and collect payment of the Fees directly from the Advertiser, as the Agency's disclosed principal(s). If the outstanding balance is still not satisfied, DAILYMOTION reserves the right (i) to apply the penalties set forth in Section 4.2 (b) until DAILYMOTION has received the Fees in full; and (ii) to refer the matter to Third Party debt collectors in order to seek the payment of the Fees and penalties; and (iii) to withhold further IOs from the same Buyer pending receipt of the Fees. In no event shall such collections procedures relieve the Agency of liability for the debt.

**c.** In both cases set forth in Section 4.2 (a) and (b), the Advertiser and Agency agree to pay all collection fees including attorneys' fees and court costs incurred to affect such collection.

# DAILYMOTION

## TERMS AND CONDITIONS

### 5. REPORTING

DAILYMOTION shall make reporting available upon Buyer's written request during the Campaign Duration, either electronically or in writing, unless otherwise specified in the IO. Reports must be broken out by day and summarized by creative execution, Ad Placement, and other variables defined in the IO, for example, Impressions and/or clicks. Once DAILYMOTION has provided the online or electronic report to Buyer, DAILYMOTION agrees that Buyer is entitled to reasonably rely on such report in order to invoice DAILYMOTION.

### 6. TERMINATION

Either party may terminate an IO at any time if the other party is in material breach of its obligations as specified hereunder that is not cured within ten days after written notice thereof from the non-breaching party, except as otherwise stated in these Terms with regard to specific breaches. Such early termination shall not relieve Buyer of amounts due to DAILYMOTION prior to the occurrence of such breach.

### 7. MAKEGOODS

**a.** DAILYMOTION will monitor delivery of the Ads, and will notify the Buyer either electronically or in writing as soon as possible (and no later than two weeks before the Campaign End Date unless the length of the campaign is less than two weeks) if DAILYMOTION believes that an under-delivery is likely. In the case of a probable or actual under-delivery, the parties may arrange for makegood consistent with these Terms.

**b.** In the event that actual Deliverables for any campaign fall below guaranteed levels, as set forth in the IO, and/or if there is an omission of any Ads (placement or creative unit), Buyer and DAILYMOTION will use commercially reasonable efforts to agree upon the conditions of a makegood flight either in the IO or at the time of the shortfall. If no makegood can be agreed upon, Buyer may execute a credit equal to the value of the under-delivered portion of the contract IO for which it was charged. In the event that Buyer has made a cash prepayment to DAILYMOTION, specifically for the campaign IO for which under-delivery applies, then if Agency and/or Advertiser is reasonably current on all amounts owed to DAILYMOTION under any other agreement for such Advertiser, Agency may elect to receive a refund for the under-delivery equal to the difference between the applicable pre-payment and the value of the delivered portion of the campaign. In no event shall DAILYMOTION provide a makegood or extend any Ad beyond the period set forth in the IO without prior written consent of Agency.

**c.** If an IO contains CPC Deliverables, the predictability, forecasting and conversions for such Deliverables may vary and guaranteed delivery, even delivery, and makegoods are not available.

### 8. FORCE MAJEURE

**a.** Excluding payment obligations, neither party will be liable for delay or default in the performance of its obligations under these Terms if such delay or default is caused by conditions beyond its reasonable control, including but not limited to, fire, flood, accident, earthquakes, telecommunications line failures, electrical outages, network failures, acts of God, or labor disputes. In the event that DAILYMOTION suffers such a delay or default, DAILYMOTION shall make reasonable

efforts within five business days to recommend a substitute transmission for the Ads or time period for the transmission. If no such substitute time period or makegood is reasonably acceptable to the Buyer, DAILYMOTION shall allow Buyer a pro rata reduction in the space, time and/or program charges hereunder in the amount of money assigned to the space, time and/or program charges at time of purchase.

**b.** In the event where Buyer is the Agency, if Advertiser's ability to transfer funds to Agency has been materially negatively impacted by an event beyond the Agency's reasonable control, including, but not limited to, failure of banking clearing systems or a state of emergency, then Agency shall make every reasonable effort to make payments on a timely basis to DAILYMOTION, but any delays caused by such condition shall be excused for sixty days from the Payment Due Date. Subject to the foregoing, such excuse for delay shall not in any way relieve Agency from any of its obligations as to the amount of money that would have been due and paid without such condition.

**c.** To the extent that a force majeure has continued for five business days, DAILYMOTION or Buyer has the right to cancel the remainder of the IO without penalty.

### 9. AD MATERIALS

**a.** It is Buyer's obligation to submit to DAILYMOTION Advertising materials in accordance with DAILYMOTION's then existing Policies.

**b.** If Advertising materials are not received by the Campaign Start Date, Buyer will still be responsible for the media purchased pursuant to IO, if any, and DAILYMOTION will invoice the Buyer accordingly.

**c.** Without limiting any rights or remedies granted to DAILYMOTION herein, DAILYMOTION reserves the right within its discretion to reject or remove from the DAILYMOTION Properties any Ads where the Advertising materials themselves or the site to which the Ad is linked, that in DAILYMOTION's sole and reasonable judgment: (i) do not comply with the Policies; or (ii) do not comply with any Law. In addition, DAILYMOTION reserves the right within its sole discretion to reject or remove from the DAILYMOTION Properties any Ads where the Advertising Materials or the site to which the Ad is linked are or may tend to bring disparagement, ridicule, or scorn upon DAILYMOTION or any of its Affiliates. In such last case, DAILYMOTION will make commercially reasonable efforts to acquire mutually acceptable alternative Advertising Materials from Buyer.

**d.** If Advertising Materials provided by Buyer are damaged, not to DAILYMOTION's specifications, or otherwise unacceptable, DAILYMOTION will use commercially reasonable efforts to notify the Buyer within two business days of its receipt of such Advertising Materials.

**e.** DAILYMOTION will not edit or modify the submitted Ads in any way without Buyer's approval, including but not limited to resizing the Ads. DAILYMOTION shall use all such Ads in strict compliance with these Terms and any written instructions provided by Buyer.

**f.** Agency and Advertiser will not use DAILYMOTION's trade name, trademarks, logos or Ads in a public announcement (including, but not limited to, through any press release) regarding the existence or content of these Terms or of the IO without DAILYMOTION's prior written approval.

# DAILYMOTION

## TERMS AND CONDITIONS

### 10. REPRESENTATIONS, WARRANTIES AND COVENANTS

#### a. Mutual Warranties.

Each Party represents and warrants at all times that: (i) it is duly organized and validly existing and in good standing under the laws of the place of its incorporation; (ii) it has full corporate power and authority to enter into the IO and to carry out the provisions hereof; (iii) it is duly authorized to execute and deliver the IO and duly authorized to perform its obligations and exercise its rights hereunder in particular that Buyer represents and warrants that it has all necessary licenses and clearances to use the content contained in its Ads; (iv) the IO is a legal and valid obligation, binding and enforceable in accordance with its terms; and (v) the execution, delivery and performance of the IO does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any Law. Each Party will comply at all times with all Laws which are applicable to such Party's performance of its obligations under this Agreement. Buyer shall use reasonable commercial efforts to require each Advertiser to comply with Laws applicable to such Advertiser's acts and omissions.

Each Party shall post on its respective website its privacy policies and adhere to their privacy policies, which abide by the applicable laws. Agency shall require each Advertiser to post on such Advertiser's website its privacy policies and adhere to such privacy policies, which abide by Laws.

#### b. Buyer's warranties

**b.i.** Buyer represents and warrants that the Ads served into the DAILYMOTION Properties pursuant to this Agreement shall (i) not contain any indecent, obscene, or pornographic material, drugs, gambling, hate speech, racist, libelous, defamatory, contrary to public policies, spam, malicious code, highly explosive subject matter or any illegal subject matter or activities or any other content that does not meet applicable advertising regulations and any content contrary to applicable laws and regulations in the applicable territory, (ii) be free of any "virus", "Trojan Horse", malware, or any other malicious code as such terms are understood in the computer industry, (iii) comply with all applicable Laws (iv) not breach any duty toward or rights of any person or entity including, without limitation, rights of intellectual property, publicity or privacy and (v) comply with all Policies.

**b.ii.** Buyer shall not use the DAILYMOTION Properties for any purpose that is unlawful or prohibited by the IO.

**b.iii.** Buyer agrees that DAILYMOTION, DAILYMOTION Properties, DAILYMOTION's brand, content, context, DAILYMOTION's specific clickstream data, visitors, and/or visitor-entered information (collectively "Data") shall be Confidential Information under this Agreement. Buyer may only use and share Data (x) to perform its obligations under the IO; and (y) for internal planning, campaign planning, qualitative campaign evaluation, scheduling and reporting. Buyer shall not use the Data to create segments regarding DAILYMOTION, DAILYMOTION Properties and DAILYMOTION's brand.

**b.iv.** Under no circumstances shall Buyer (x) retarget any user based upon DAILYMOTION's brand, and (y) resell or otherwise transfer Data to any Third Party except as otherwise permitted herein. Buyer shall also be restricted from targeting a visitor based on a single visit to DAILYMOTION Properties as the sole criteria for Buyer's delivery of an Ad; provided, however it is understood that this restriction does not apply to an Advertiser's website on which Advertiser has directed Buyer to conduct a re-targeting campaign.

**b.v.** Under no circumstances shall Buyer modify or alter the Advertising formats and the corresponding technical

specifications made available in the Ad Placement, in particular the skip button that might be associated to the Advertising formats proposed in the Inventory at DAILYMOTION's sole discretion.

**c.** All ownership rights, title, and interest in and to the DAILYMOTION Properties, as such may be modified, upgraded, and/or enhanced from time to time will remain with and belong exclusively to DAILYMOTION.

In a more general manner, each Party retains any and all pre-existing right, title and interest in and to its website(s), name, trademarks, intellectual property, websites, players and all components thereof. The IO shall not be construed in any manner as transferring any rights of ownership of or license to the foregoing, and/or to the features or information therein, except as expressly set forth in the IO. All rights not expressly granted are reserved. Under no circumstances will the IO be construed as granting, by implication, estoppel or otherwise, a license to any intellectual or other property or components thereof other than as specifically granted in this IO.

If data is provided to Buyer by DAILYMOTION to create or specify targeted segments for Buyer, Buyer shall have no right, title, or interest in or to any such data other than to use such data only in connection with the relevant transaction with Buyer. In addition, any data received by Buyer in connection with this Agreement shall be limited to use solely as permitted herein, and shall not be used to create segments, nor be used, modified, disassembled, decompiled sold or reproduced in any fashion.

Buyer represents and warrants that it shall, at all times respect all applicable Laws with regards to data collection and tags implemented to collect such data.

**d.** DAILYMOTION represents and warrants that DAILYMOTION has all necessary permits, licenses, and clearances to sell the Ad Placement specified in the IO.

### 11. INDEMNIFICATION

**a.** When the Buyer is the Advertiser, Advertiser agrees to defend, indemnify and hold harmless DAILYMOTION, its Affiliates and their respective directors, officers, employees and agents from any and all losses (including reasonable attorney fees) incurred as a result of a Third Party claim, judgment or proceeding relating to or arising out of Advertiser's breach of Sections 9 and/or 12, violation of Policies (to the extent the applicable terms of such Policies have been provided to Agency at least ten days prior to the violation giving rise to the claim), or the content or subject matter of any Ad or Advertising Materials to the extent used by DAILYMOTION in accordance with these Terms and Conditions or an IO, including but not limited to allegations that such content or subject matter violate the right of a Third Party, are defamatory or obscene, or violate any law, regulations or other judicial or administrative action.

**b.** When the Buyer is the Agency, the Agency represents and warrants that it has the authority as agent to Advertiser to bind Advertiser to these Terms and each IO. Agency agrees to defend, indemnify and hold harmless DAILYMOTION its Affiliates and their respective directors, officers, employees and agents from any and all losses incurred as a result of Agency's alleged breach of the preceding sentence.

# DAILYMOTION

## TERMS AND CONDITIONS

### 12. LIMITATION OF LIABILITY

In no event will DAILYMOTION be liable for any consequential, indirect, incidental, punitive, special or exemplary damages whatsoever, including without limitation, damages for loss of profits, business interruption, loss of information and the like, incurred by the other party arising out of the IO, even if DAILYMOTION has been advised of the possibility of such damages.

### 13. NON-DISCLOSURE, DATA OWNERSHIP, PRIVACY AND LAWS

**a.** Any marked confidential information and proprietary data provided by one party, including the Ad description, and the pricing of the Ad, set forth in the IO, and the IO itself, shall be deemed "Confidential Information" of the disclosing party. Confidential Information shall also include information provided by one party, which under the circumstances surrounding the disclosure would be reasonably deemed confidential or proprietary. Confidential Information shall not be released by the receiving party to anyone except an employee, or agent who has a need to know same, and who is bound by confidentiality obligations. Neither party will use any portion of Confidential Information provided by the other party hereunder for any purpose other than those provided for under this Agreement.

**b.** Notwithstanding anything contained herein to the contrary, the term "Confidential Information" shall not include information which: (i) was previously known to a party; (ii) was or becomes generally available to the public through no fault of the receiving party ("Recipient"); (iii) was rightfully in Recipient's possession free of any obligation of confidence at, or subsequent to, the time it was communicated to Recipient by the disclosing party ("Discloser"); (iv) was developed by employees or agents of Recipient independently of and without reference to any information communicated to Recipient by Discloser; or (v) was communicated by Discloser to an unaffiliated Third Party free of any obligation of confidence. Notwithstanding the foregoing, either party may disclose Confidential Information in response to a valid order by a court or other governmental body, as otherwise required by law or the rules of any applicable securities exchange or as necessary to establish the rights of either party under these Terms; provided, however, that both parties will stipulate to any orders necessary to protect said information from public disclosure.

**c.** All personally identifiable information provided by individual web users who are informed that such information is being gathered solely on behalf of Advertiser pursuant to the Advertiser's posted privacy policy is the property of Advertiser, is subject to the Advertiser's posted privacy policy, and is considered Confidential Information. Any other use of such information must be set forth in the IO signed by both parties.

### 14. MISCELLANEOUS

**a.** The Buyer shall not assign or transfer any of its rights or obligations hereunder, nor attempt to assign or transfer such rights or obligations without DAILYMOTION's prior written approval will be null and void. All terms and provisions of these Terms and each IO will be binding upon and inure to the benefit of DAILYMOTION and the Buyer hereto and their respective permitted transferees, successors and assigns.

**c.** These Terms and the related IO constitute the entire agreement of the parties with respect to the subject matter and supersede all previous communications, representations, understandings, and agreements, either oral or written, between the parties with respect to the subject matter of the IO. The IO may be executed in counterparts, each of which shall be an original and all of which together shall constitute one and the same document.

**d.** In the event of any inconsistency between the terms of an IO and these Terms, the terms of the IO shall prevail. All IOs shall be governed by the laws of France. DAILYMOTION and Buyer agree that any claims, legal proceeding or litigation arising in connection with the IO (including these Terms and Conditions) will be brought solely in Paris courts, and the parties consent to the jurisdiction of such courts. No modification of these Terms and Conditions or any IO shall be binding unless in writing and signed by both parties. If any provision herein is held to be unenforceable, the remaining provisions shall remain in full force and effect. All rights and remedies hereunder are cumulative.

**e.** All notices to DAILYMOTION and Agency shall be sent to the contact as noted in the IO with a copy to be sent to DAILYMOTION's legal department ([legal@dailymotion.com](mailto:legal@dailymotion.com)). All notices to Advertiser shall be sent to the address specified on the IO.

**f.** Sections 4, 7, 10, 11, 12 and 13 shall survive termination or expiration of this Agreement and Section 5 shall survive for 30 days after the termination or expiration of these Terms. In addition, each Party shall return or destroy the other Party's Confidential Information and remove Advertising Materials and Ad Tags.

DAILYMOTION SA – 140 Boulevard Malesherbes 75017 Paris - France - RCS Paris B 483 487 112

**dailymotion** advertising  
advertising.dailymotion.com