

# Standard Terms and Conditions

*Version 1.1, Effective as of August 28nd 2020*

Visual Elements AS, is a Norwegian Company with organization no.: NO924344415MVA, conducting its business from Lars Hilles gate 30, co/VIS Innovasjon, 5008 Bergen, NORWAY (hereinafter referred to as (“**We**“, “**Us**” ). These terms and conditions (hereinafter jointly referred to as ‘**Terms**’) govern the relationship between Us and the legal entity or individual (Hereinafter referred to as ‘**You**’ or ‘**Your**’) that, by accessing and/or using everviz, as defined below, acknowledges and agrees to these legally binding terms and conditions and undertakes to be legally bound by them.

## 1. Definitions

**everviz** shall mean the service made available by Us to You through Our Website, subject to these Terms;

**Our Website** shall mean [www.everviz.com](http://www.everviz.com) and all associated subdomains.

**Party** shall mean You or Us individually;

**Parties** shall mean You and Us jointly;

**Subscription Period** shall mean the time period from the date of Your signup to a subscription plan till the expiry or renewal of that subscription according to the billing cycle for the chosen subscription plan, as set forth on the invoice after purchase. For users on a free plan a Subscription Period shall mean the time period from the date of Your signup till lawful cancellation or termination;

**Third Party** shall mean any other party than the Parties;

## 2. Ownership and Copyright

everviz is the property of Visual Elements AS and is protected by copyright law as well as other statutory and non-statutory intellectual property laws. everviz product names are owned by Us and protected under trademark law.

All title and copyrights in and to everviz and all accompanying materials and rights are and shall remain fully and solely owned by Us. Nothing in these Terms shall be held or interpreted as transferring any proprietary rights to You.

Any pre-existing intellectual property and content, including customer data, which You provide or upload to everviz under these Terms shall remain Your property. You shall also retain the rights to all information, data, text, images and other materials uploaded, posted, stored and/or

otherwise shared or made available online in connection with the use of everviz. However, unless explicitly denied, by using everviz You consent to grant Us a worldwide, royalty-free, non-exclusive right to host and use any such content provided by You, and You hereby warrant that You have all the rights necessary to grant Us such rights. You also retain the full and sole responsibility and all liabilities related to such content provided by You.

### **3. Grant of use**

When signing up for everviz You must choose a plan available from Our Website. The plan grants You a specific set of usage-rights to functionality in everviz, as described on our Website.

You shall have the right to alter between different plans during the subscription period, in accordance with Refund Policy, below.

We reserve the right to change the functionality of everviz at any time at our discretion.

Depending on Your chosen plan at any given time, subsection 3.1 or 3.2 below shall apply.

#### **3.1 Subscription Plan**

Subject to these Terms and upon Your full payment of the applicable fees for each Subscription Period, We grant You a non-exclusive, non-transferable, non-sublicensable and time limited right to use everviz within the scope defined in this subsection. The subscription plan grants You access to use everviz “as is” and within the scope of the usage-rights and functionality associated with the plan as described on our Website.

The plan You have chosen and the associated Subscription Period shall be stated in the invoice sent to You by Us by email at the beginning of each Subscription Period.

These Terms will renew for each initiated Subscription Period.

#### **3.2 Free Plan**

Subject to these Terms when on a free everviz plan, We grant You a non-exclusive, non-transferable, non-sublicensable, time limited right to use everviz within the scope of this plan.

The free plan grants You access to use everviz “as is” and within the scope of the usage rights and functionality with the free plan as set forth on Our Website.

For users on a Free Plan these Terms and the applicable usage rights set forth on Our Website will automatically renew after each one (1) month of having an account.

### **4. Maintenance and Support**

Error corrections such as bug fixes and maintenance corrections that We provide during Your Subscription Period shall be available at no extra cost.

During the Subscription Period, We will provide support for everviz as specified on our Website.

Priority Support and additional support hours are available if You contact Us.

## **5. Subscription Fee**

Applicable subscription fees are stated on our Website. All subscription fees are subject to change upon 4 weeks notice. Changes of the subscription fees will be applied from the next upcoming Subscription Period.

An individual can use a login across multiple devices, but is not allowed to share login with other individuals.

Payment is due in advance and shall be made at the start of each Subscription Period. You will receive an Invoice by email for each withdrawal. The next Subscription Period starts on the date on the invoice. In case of late payment, We may claim late payment interest.

Each Party shall be responsible to pay any bank charges and/or local taxes imposed by law of Party's home country related to the purchase. Invoices from Us do not include taxes, except VAT in the case of Norwegian customers.

All accompanying rights are granted to You on the condition that all the due fees are paid to Us in full and on time.

You shall ensure that Your contact and payment information is accurate and up-to-date. We do not take responsibility for any lost communication.

## **6. Refund policy**

### **6.1 General**

You are allowed to switch between subscription plans, and to add/subtract users to/from Your plan. Refunds, in case of upgrades, downgrades and termination, will be made only as specified in the following Subsections.

### **6.2 Upgrades**

If You switch to a more expensive plan or add users to Your plan the subscription plan will be upgraded/expanded immediately.

We will in such case:

- Prorate the remaining time on the existing subscription and issue an Invoice; and/or
- Prorate the new subscription until the current Subscription Period's end date and charge that amount; and
- Set the updated subscription as the active subscription.

### **6.3 Downgrades**

If You switch to a less expensive subscription plan, or subtract users from Your plan will be downgraded from the start of the next Subscription Period. We will adjust the subscription appropriately and then Invoice the new amount for the next upcoming Subscription Period.

If You are on an annual Subscription Period and wish to downgrade during the course of that Subscription Period, You must contact Us in order to reach an individual agreement concerning a possible refund.

### **6.4 Termination**

If You cancel Your subscription, the cancellation will be valid from the start of the next Subscription Period. In such a case, You will have no claim for a refund based on the cancellation.

We may terminate Your access to everviz without cause, at any time. Notice of termination of access to everviz by Us will be sent to the contact email associated with Your account.

If We terminate Your subscription before expiration, We will prorate the remaining time on the existing Subscription Period and on that basis issue a refund. You will, however, not be entitled to a refund in case of termination due to a material breach of these Terms. A refund is in no way transferable to a cash refund.

Upon termination, all data, files, or other information will be stored on our servers for 6 months. It is Your responsibility to retrieve and backup all account contents before termination.

The Privacy Policy details the retention policy on personal data.

## **7. Marketing**

You shall not do anything that might misrepresent the ownership of everviz. You undertake not to brand everviz as Your own or declare or give the impression that You own the copyright or other proprietary rights in everviz.

You agree to conduct Your business with the highest standards and will do nothing to injure our reputation.

If You are on a free plan You agree that You are not allowed to remove the watermark from any public visualizations.

## **8. Warranty**

The warranties in this section are limited to Your use of everviz.

### **We warrant and represent that:**

We have the full and unconditional ownership of everviz and We have all necessary rights to grant You the right to use everviz,

everviz will perform substantially in accordance with written specifications on Our Website, provided that it has been used in accordance with all documentation and specifications made available,

We will perform our obligations under these Terms in accordance with applicable laws and regulations,

We have the requisite knowledge, personnel, resources and know-how to fully perform and deliver everviz and associated services as contemplated by these Terms in a professional manner.

### **You warrant and represent that:**

We are not responsible for any information or data that may be lost or unrecoverable.

You are responsible for implementing appropriate IT security safeguards (including security checks and anti-virus) to satisfy requirements to security, safety and reliability of any website or application including its content.

You are, furthermore, obliged not to use everviz in any way that could harm everviz or impair the use for any other user. We retain the right to deny You access, and remove or block inappropriate visualizations and data.

You warrant that any users of everviz under these Terms are at least 18 years old.

You warrant legal rights to enter into these Terms.

## **9. Limitations of Liability**

All software and services is provided by Us 'as is' and may have errors and omissions.

UNDER NO CIRCUMSTANCES, AND EVEN IF INFORMED THEREOF BY YOU OR ANY OTHER PARTY, SHALL WE BE LIABLE FOR (i) LOSS OF, OR DAMAGE TO, DATA; (ii) SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES; OR (iii) LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

In all events, our liability for damages to You for any cause whatsoever related to these Terms, shall be limited to fees paid or due by You for a twelve (12) month period under these Terms.

## 10. Intellectual Property Infringement

We will defend, indemnify and hold You harmless against any claim stating that everviz is violating any Third Party intellectual property rights provided that:

1. You promptly notify Us of the claim, such notice to be provided no later than ten (10) business days after receipt of said claim(s),
2. A hardcopy of the notices of copyright infringement is sent to:  
Visual Elements AS co/VIS innovasjon, Lars Hilles gate 30, 5008 Bergen, Norway, and a softcopy to: [privacy@everviz.com](mailto:privacy@everviz.com).
3. You shall in good faith make commercially reasonable efforts to stop any claim made against You by a Third Party related to everviz. We shall, however, have sole control of the defense and any related settlement negotiations in the case of legal proceedings.
4. If We are held by a final court ruling to be infringing any Third Party intellectual property rights We will at its option: (i) obtain the right for You to continue using everviz consistent with these Terms; (ii) modify everviz so that it is non-infringing; or solely in the event that (i) and (ii) are not feasible, (iii) refund all Invoiced amounts the last 12 months, to You and all of our obligations under these Terms shall terminate upon written notice.
5. You shall timely provide Us with all necessary assistance, information and authority to perform the above.
6. Notwithstanding the foregoing, our indemnity obligations under these Terms shall under any circumstances be limited to the total amount Invoiced to You by Us under these Terms during the last twelve (12) months prior to the day when You provided notice to Us of claim subject to this section.

## 11. Confidentiality

For the purpose of this section the Parties shall be called Disclosing Party and Receiving Party.

Confidential Information shall mean any and all written, verbal, or demonstrated information provided by one Party to the other in connection with these Terms; Confidential information shall include, without limitation, information relating to technologies, finances, marketing and legal affairs which relate in any manner to a Party's actual, or anticipated business whether obtained in tangible or intangible form, including oral or visual.

Each Party acknowledges that Confidential Information is proprietary, that it is valuable to Disclosing Party and that any disclosure or unauthorized use thereof may cause irreparable harm and loss to Disclosing Party.

Confidential Information shall not include information that (i) is generally known to the public at the time of disclosure; (ii) is legally received by Receiving Party from a Third Party, which Third Party is in rightful possession of Confidential Information, (iii) becomes generally known to the public subsequent to the time of such disclosure, but not as a result of disclosure by Receiving

Party, or (iv) prior to the mutual agreement of these Terms, is already in the possession of Receiving Party.

Obligations of receiving Party in regards to Confidential Information:

In consideration of the disclosure to Receiving Party of Confidential Information, the Receiving Party agrees to receive and to treat Confidential Information on a confidential and restricted basis and to undertake the following additional obligations with respect thereto,

To use Confidential Information for the sole purpose of fulfilling these Terms unless otherwise expressly agreed to in writing by Parties,

Not to duplicate, in whole or in part, any Confidential Information,

Not to disclose Confidential Information to its members, officers, employees, affiliates, counsel or consultants except on a need-to-know basis, and each such person Receiving Confidential Information shall be notified of and required to abide by the terms and conditions of these Terms,

Not to disclose Confidential Information to any Third Party entity or individual, corporation, partnership, sole proprietorship, customer, advisor or client without the prior express written consent of Disclosing Party;

This confidentiality section shall survive any termination of these Terms however occasioned.

## **12. Relationship Between Parties**

Parties are independent contractors, and these Terms will not be construed as constituting either Party as partner, joint venture, agency or fiduciary of the other, as creating any other form of legal association that would impose liability on one Party for the act, or failure to act, of the other, or as providing either Party with the right, power, or authority (express, or implied) to create any duty or obligation of the other. Neither Party shall directly or indirectly represent to the public that it has the right or the authority to create or accept obligations on behalf of the other Party. Except as otherwise expressly provided in these Terms, each Party has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed all work to be performed by it under these Terms.

## **13. Severability**

In the event any provision of these Terms are held to be invalid or unenforceable, the remaining provisions of these Terms will remain in full force until terminated.

## **14. Waiver**

The waiver by either Us, or You of any default or breach of these Terms shall not constitute a waiver of any other or subsequent default or breach. Except for actions for non-payment or breach of our intellectual proprietary rights, no action, regardless of form, arising out of these Terms may be brought by You more than one (1) year after the cause of action has occurred.

## **15. Non-assignment**

You are not allowed to assign or transfer all, or any part of Your rights under these Terms without our prior written consent.

## **16. Applicable Law and Venue**

These Terms shall be governed by and construed in accordance with the laws of Norway.

Any dispute, controversy or claim arising out of or relating to these Terms, breach, termination or invalidity thereof, or any other relationship between the Parties, the Parties shall seek to solve amicably through negotiations. If the Parties do not reach an amicable solution within four (4) weeks, any dispute, controversy or claim shall be finally settled by the regular courts of Norway. Both Parties hereby agree to and accept Bergen District Court (Bergen tingrett) as exclusive legal venue.

## **17. Entire Agreement**

These Terms supersedes all prior or contemporaneous oral or written communications, proposals and representations relating to the relationship between the Parties.

No amendment to, or modification of these Terms will be binding unless made in writing and signed by the Parties. Parties agree that any additional or different terms in any other document or arrangement not forming part of these Terms, including any letter or terms of engagement or the like, purchase order, Invoice, acknowledgment, delivery receipt, confirmation or other delivery or acceptance document issued by or on behalf of Us, or by or on behalf of You at the request of Us, shall be void, and of no force or effect if in breach with these Terms.

## **18. Personal Data We Collect**

In collecting information about You, We are acting as a data controller and are required to provide You with information about why and how We collect and use Your data, and about the rights You have over Your data.

These matters are duly treated in our privacy policy, available at Our Website. To the extent applicable to these Terms, the Parties shall reasonably assist each other in its compliance with any and all international applicable laws related to data protection.

## **19. Notices**



All notices to Us to be given under these Terms shall be in writing and shall be delivered by email to [sales@everviz.com](mailto:sales@everviz.com).

Information from Us to You shall be sent by email to the email address You have provided upon registration. It is Your responsibility to ensure that the registered contact information is accurate and up to date. We do not take responsibility for any lost communication.

All notices, demands or other communication given by Us shall be deemed to have been duly given when made in writing and sent to the registered email address.

## **20. Our Right to Change the Terms**

We may at any time and for any reason amend these Terms by posting a new version on our Website. Any new version of the Terms will be effective from Your next Subscription Period. It is Your responsibility to keep track of such modifications prior to any renewal of Subscription Period.