**TERMS AND CONDITIONS**

1. Interpretation

1.1 In these Terms and Conditions, words and expressions defined in the Particulars shall have the same meanings, and the definitions and rules of interpretation in this whatever apply.

**AutoCAD:** The software known as AutoCAD, or such successor software CAD software produced by Autodesk Inc or its successors or assignees from time to time or such equivalent software which MonkeyFlow deems to be compatible from time to time (if any) mutatis mutandis

**BricsCAD:** The software known as BricsCAD, or such successor software CAD software produced by Bricsys Inc or its successors or assignees from time to time or such equivalent software which MonkeyFlow deems to be compatible from time to time (if any) mutatis mutandis

**BIMflow:** The MonkeyFlow proprietary plugin extension for Revit and Content Library

**Business Day:** any day, excluding the period 24th December to 1st January inclusive, which is not a Saturday, Sunday or public holiday in the UK.

**CADflow:** The MonkeyFlow proprietary plugin extension for AutoCAD or BricsCAD and Content Library

**Charges:** the fees payable to MonkeyFlow, as described in the Particulars.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.

**Configuration Services:** the configuration, training and related work referred to in clause 2, to be performed by MonkeyFlow to install the Software and provide support to the Customer in enabling its use with Third-Party Software as applicable.

**Content Library:** The proprietary data provided by MonkeyFlow for use with the Software from time to time to be licensed to the Customer for use strictly on the terms of this Agreement

**Customer Representative:** the representative of the Customer appointed in accordance with clause 8.3. The Customer’s Representative at the Licence Commencement Date is named in the Particulars.

**Included Additional Support Time:** 30 minutes of Support per calendar month during the Term to be provided to the Customer without additional charge provided that amount of time which is not used during a calendar month shall not roll-over from month to month.

**Maintenance:** any error corrections, updates and upgrades that MonkeyFlow may provide or perform with respect to the Software, as well as any other, all as described in clauses 5.

**Normal Business Hours:** 9.00am to 5.30pm local UK time, Monday to Friday, excluding public holidays and excluding the period 24th December to 1st January inclusive.

**Particulars:** The specified terms set out on the first page of this Agreement

**Personnel:** directors, office holders, employees or contractors of the Customer.

**Project Plan:**  the plan for delivering the Configuration Services (if any)

**Revit:** The software known as Autodesk Revit, or such successor software BIM software produced by Autodesk Inc or its successors or assignees from time to time

**Services:** the Configuration Services, Maintenance and/or Support as applicable, given the context in which the term Services is used.

**Software:** BIMflow and/or CADflow as set out in the Particulars.

**Software Specification:** the functionality and performance specifications for the Software, as set out in the Annexe.

**Support:** support, training or content creation services provided to the Customer under this Agreement as more particularly described in Clause 6.1

**Support Charge:** £80 per hour + VAT

**Third-Party Software:** The third-party software(being Revit and/or AutoCad) which the Software is intended to interact with as a plugin extension.

**VAT:** Value-Added-Tax or any equivalent successor UK tax

1.2 Clause headings shall not affect the interpretation of this Agreement.

1.3 A person includes a corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 The Special Conditions referred to in the Particulars shall be incorporated into this Agreement to the extent that they do not adversely affect the rights and remedies of MonkeyFlow under this Agreement.

1.6 Words in the singular shall include the plural and vice versa, and a reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.8 A reference to writing or written includes e-mail but not faxes.

1.9 References to clauses are to the clauses of this Agreement.

**2. SOFTWARE LICENCE**

2.1 In consideration of the Customer’s agreement to pay the Charges to MonkeyFlow, MonkeyFlow hereby grants to the Customer on and subject to the terms and conditions of this Agreement a non-exclusive, non-transferable licence to allow its Licensed Users to use the Software solely for the Customer's business purposes for the Term of this Agreement.

2.2 The Customer shall not:

1. use the Software or Content Library in any way or for any purpose that is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
2. attempt to duplicate, modify or distribute any portion of the Software except as expressly permitted in writing by MonkeyFlow from time to time and provided always that such permission is revocable by MonkeyFlow at its absolute discretion at any time;
3. attempt to reverse compile, disassemble, reverse engineer, modify, adapt or otherwise reduce to human-perceivable form any of the Software, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties;
4. sub-license, assign or novate the benefit or burden of this licence in whole or in part or otherwise transfer the licence in any way;
5. allow the Software to become the subject of any charge, lien or encumbrance; and
6. deal in any other manner with any or all of its rights and obligations under this Agreement;
7. permit the Software to be used by more than the number of Licensed Users; or
8. attempt to obtain, or assist others in obtaining, access to the Software, other than as provided under this clause 2.1.

2.3 The Customer shall:

1. ensure that the number of persons using the Software does not exceed the number of Licensed Users
2. ensure that the Software is installed on compatible equipment only as may be notified by MonkeyFlow to the Customer from time to time
3. notify the Supplier as soon as it becomes aware of any unauthorized use of the Software by any person;
4. without limitation to any other remedy which MonkeyFlow has available under this Agreement, in the event that the Customer permits the Software to be used by a number in excess of the Licensed Users, to pay for broadening the scope of the licences granted under this licence to cover the unauthorized use, an amount equal to the fees which MonkeyFlow would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at 8% above the Bank of England base rate, from such date to the date of payment.

2.4 This Agreement shall not prevent MonkeyFlow from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under this Agreement.

2.5 The Customer shall permit MonkeyFlow to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Customer is complying with the terms of this licence, provided that MonkeyFlow provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times

2.6 The Customer may not use any such information provided by MonkeyFlow or obtained by the Customer during any such process permitted under clause 2.2 to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

2.7 The Customer shall not give access to the Software through any network of computers to users who are not employees or office holders of the Customer

**3. Content Library**

3.1 MonkeyFlow shall supply the Content Library in conjunction with the Software

3.2 MonkeyFlow may alter vary add or remove data in the Content Library at any time and makes no warranty as to its specific content from time to time

3.3 MonkeyFlow shall use reasonable endeavours to ensure that it has appropriate rights to use and distribute any data forming part of the Content Library to the Customer but no warranty is given in this regard

3.4 Insofar as MonkeyFlow is capable of licensing the same, for the Term of this Agreement the Customer may use the Content Library as part of its work and onward distribution of data forming part of the Content Library in combination with substantive work of the Customer is authorised provided that data from the Content Library is merely ancillary and/or incidental to such work for the Customer’s own business purposes and no attempt is made to package and/or resell data from the Content Library separately and the Customer does not grant any right to third parties to use the content of the Content Library separately from the work of the Customer.

3.5 The Customer may not use the Content Library or any content forming part of the same at any time following termination or lapse of this Agreement and MonkeyFlow shall be entitled to use any technical measures it at its sole discretion deems appropriate to limit the use of the Content Library following termination of this Agreement

**4. CONFIGURATION SERVICES**

4.1 MonkeyFlow shall perform the Configuration Services on or within a reasonable time of the Licence Commencement Date (or within a reason time of such other date as is agreed by MonkeyFlow in writing) and using reasonable endeavours to comply with any further specific timetable agreed in writing with the Customer but any such dates shall be estimates only, and time shall not be of the essence.

4.2 The parties shall co-operate in implementing the Configuration Services pursuant to Clause 2.1 and take reasonable steps to comply with any agreed Project Plan

4.3 MonkeyFlow shall use reasonable endeavours to assist the Customer in integrating existing content of the Customer with the Software as part of the Configuration Services but in any event MonkeyFlow shall not be required to spend more than one day on the Configuration Services.

4.4 With respect to any non-conformance between the Software and Third-Party Software used by the Customer (Errors) during the Configuration Services, MonkeyFlow shall use reasonable endeavours to correct any such Error within a reasonable time but in any event MonkeyFlow shall not be required to spend more than one day on the Configuration Services.

4.5 If MonkeyFlow reasonably expects that further work will be required on Configuration Services in excess of one day, any work to be completed in additional days shall first be approved in writing by both MonkeyFlow and the Customer, shall be charged at the Support Charge

4.6 The Configuration Services shall be performed remotely only and the Customer must provide MonkeyFlow with such access to its systems, Customer Representative and Personnel as MonkeyFlow reasonably requires for the Configuration Services.

**5. MAINTENANCE SERVICES**

5.1 MonkeyFlow shall use reasonable efforts to Maintain the Software during the licence term to ensure compatibility with Third-Party Software as applicable. The Customer must install any updates so provided promptly and shall be solely responsible for their installation.

5.2 Should the Customer determine that the Software includes a defect, the Customer may file error reports through its Customer Representative and MonkeyFlow may, at its discretion, upgrade versions, install error corrections and apply patches to Software.

5.3 Subject to its obligations under Clause 5.1, MonkeyFlow may at its absolute discretion provided maintenance updates to the Customer. Such updates may include error corrections, software updates and variation additional or removal of features as MonkeyFlow deems necessary for software function. The Customer shall be solely responsible for installation of such updates and must do so promptly and MonkeyFlow shall bear no liability for any consequences arising from the Customer’s failure to install an update.

5.4 The Customer expressly acknowledges that MonkeyFlow does not have control over the operation or alterations to Third-Party Software and MonkeyFlow is not able to warrant that the Software will remain compatible with Third-Party Software

5.5 If MonkeyFlow determines that it is not possible to Maintain the Software or otherwise ensure that Software continues to function and/or be compatible with the Third-Party Software MonkeyFlow may at its sole discretion and without limitation to the other rights of MonkeyFlow under this Agreement and without providing any additional warranty, (a) provide alternative replacement software in place of the Software or (b) terminate this licence immediately by notice in writing to the Customer and refund any Charges paid by the Customer as at the date of termination in respect of any period of the Term beyond the date of termination and this refund shall constitute the Customer’s sole remedy in respect of any non-functionality of the Software

**6. SUPPORT SERVICES**

6.1 MonkeyFlow may at its absolute discretion provide support, training, consultancy and content creation services to the Customer on the terms set out in this Clause (“Support”) provided that it shall use reasonable steps to comply with requests for the Customer for Support where such request will not exceed the time allowed for Included Additional Support.

6.2 Support in excess of the Included Additional Support shall be chargeable to the Customer at the Support Charge or as otherwise agreed between the Customer and MonkeyFlow from time to time in respect of specific projects excluding the Included Support Time

6.3 Only the Customer Representative shall be authorised to contact MonkeyFlow and request Support, however MonkeyFlow may at its absolute discretion accept support requests from employees or directors of the Customer (or other representatives of the Customer whom the Supplier reasonably believes have the authority to authorise additional work and incur Support Charges on behalf of the Customer)

6.4 A support request received by MonkeyFlow from the Customer or other party listed in Clause 6.3 shall form an contractual offer from the Customer to engage the services of MonkeyFlow for Support at the Support Charge. MonkeyFlow may accept such offer either by notice to Customer or by supplying the Support requested

6.5 The Support Charge incurred in relation to Support supplied under this clause shall be payable by the Customer to MonkeyFlow within 30 days of MonkeyFlow invoicing the Customer for Support performed. MonkeyFlow reserves the right to invoice for Support in advance and refuse to perform the Support until payment of the invoice.

7. **EXPORT**

7.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under the Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (“Export Control Laws”), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

7.2 Each party undertakes:

(a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and

(b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

**8. CUSTOMER'S OBLIGATIONS**

The Customer shall:

8.1 provide MonkeyFlow with all necessary:

1. co-operation in relation to this Agreement; and
2. access to such information as may be required by MonkeyFlow;
3. access to facilities, premises, software and systems, as may be required by MonkeyFlow (including remote access)

in order to render the Services, including but not limited to security access information and software interfaces to the Customer's other business applications;

8.2 provide such assistance from its Personnel, including the Customer Representative, as may be reasonably requested by MonkeyFlow from time to time;

8.3 appoint the Customer Representative, who shall have the authority to contractually bind the Customer on all matters relating to this Agreement, and use reasonable endeavours to ensure continuity of the Customer Representative;

8.4 comply with all applicable laws and regulations with respect to its activities under this Agreement and use of the Software;

## 8.5 The Customer shall ensure that appropriate environmental conditions are maintained for the Supported Software and shall take all reasonable steps to ensure that the Supported Software is operated in a proper manner by the Customer's employees.

8.6 Report any defects with the software promptly to MonkeyFlow through the Customer Representative and without prejudice to the generality of the above provide any assistance or information as may reasonably be required by MonkeyFlow, including in relation to the diagnosis of any defects

8.7 carry out all its other responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, MonkeyFlow may adjust any timetable or delivery schedule in respect of the Services as reasonably necessary; and

8.8 to the extent permitted by law defend, indemnify and hold harmless MonkeyFlow against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Software or Services or breach of this Agreement howsoever arising or any negligent or wrongful act of the Customer, its officers, employees, contractors or agents

8.10 At the end of this Agreement howsoever determined delete, uninstall or otherwise put beyond its use the Software and Content Library and confirm to MonkeyFlow in writing that this has been done and provide such access to its premises and systems as MonkeyFlow shall reasonably request to verify the same and MonkeyFlow may include technical measures in the Software to effect the same

**9. MonkeyFlow’s OBLIGATIONS**

9.1 MonkeyFlow undertakes that the Services will be performed with all reasonable skill and care.

9.2 MonkeyFlow warrants that the Software will perform substantially as described. This warranty shall not apply to the extent of any non-conformance which is caused by:

1. use of the Software contrary to MonkeyFlow's instructions or modification or otherwise than as permitted by the Agreement including but not limited to use of the Software on unsupported hardware or operating systems;
2. alteration of the Software by any party other than MonkeyFlow or MonkeyFlow’s agents;
3. use of the Software for a purpose or in a context other than the purpose or context for which it was designed
4. Changes made to Third-Party software by the developers of the same

If the Software does not conform to the foregoing warranty and the Customer Representative notifies MonkeyFlow of the same and provides all the information that may be necessary to assist MonkeyFlow in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable MonkeyFlow to re-create the defect or fault, MonkeyFlow will, at its expense, use reasonable commercial efforts to correct any such non-conformance with a reasonable time, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranty set out in this clause. Notwithstanding the foregoing, MonkeyFlow does not warrant that the Customer´s use of the Software and the Services will be uninterrupted or error-free.

9.3 MonkeyFlow shall not be responsible for any loss, destruction, alteration or disclosure of data of the Customer caused by any third party

9.4 Nothing in this Agreement shall obligate MonkeyFlow to perform Services, Maintenance or otherwise conduct work outside Normal Business Hours

9.5 The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.

## 9.6 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care, and the Customer acknowledges that it shall have no other rights or remedies in respect of the Software except under and in accordance with this Agreement.

**10. CHARGES AND PAYMENT**

10.1 The Customer shall pay the Charges including but not limited to:

1. the amounts set out in the Particulars for the Configuration Services;
2. any additional Support Charge for Support agreed from time to time; and
3. the fee for the Software Licence set out in the Particulars for the use and maintenance and support of the Software.

10.2 The Customer shall reimburse MonkeyFlow for all actual, reasonable travel expenses including, but not limited to, airfare, hotel and meals incurred by MonkeyFlow in performance of the Services but MonkeyFlow shall be under no obligation to perform any Services other than remotely.

10.3 All amounts and fees stated or referred to in this Agreement are exclusive of VAT, or any relevant local sales taxes, for which the Customer shall be responsible and which shall be added to MonkeyFlow's invoice(s) at the appropriate rate.

10.4       The initial Configuration Service fees shall be payable on the final signature of this Agreement

10.5 The Software Licence fees, set out in the Particulars shall be payable annually in advance from the Licence Commencement Date and thereafter on each anniversary of the same, based on the number of sessions completed in each calendar month, by direct debit on or about the tenth day of the following calendar month.

10.6 MonkeyFlow shall invoice the Customer for any additional Support Charge or other charges payable or agreed to be payable to MonkeyFlow, and each such invoice is due and payable 30 days after the invoice date.

10.7 If MonkeyFlow has not received payment within five days after the due date for payment, and without prejudice to any other rights of MonkeyFlow:

1. the Customer shall pay to MonkeyFlow an administration fee amounting to ten per cent (10%) of the late payment; and

(b) interest shall accrue on such due amounts at the rate of 8% over the Bank of England base rate from time to time, commencing on the due date and continuing until fully paid, whether before or after the judgment.

10.8 If the Customer fails to pay any amount due to MonkeyFlow under this Agreement within 30 days of the due date for payment, MonkeyFlow may with immediate effect terminate or temporarily suspend all rights of access for the Customer and Licensed Users use the Software.

**11. PROPRIETARY RIGHTS**

11.1 The Customer acknowledges and agrees that MonkeyFlow and/or its suppliers own all intellectual property rights in the Software, Content Library and Services including any changes through Maintenance. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Software, Services or any related documentation.

11.2 MonkeyFlow confirms that it has all the rights in relation to the Software that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

11.3 On the occurrence of any claim against the Customer that that the Software infringes any United Kingdom patent effective as of the date of this Agreement, copyright, database right or right of confidentiality (“IP Claim”) the Customer shall promptly notify MonkeyFlow of such a claim and MonkeyFlow shall at its sole discretion be entitled to defend the Customer against any IP Claim, and where MonkeyFlow conducts such defence MonkeyFlow shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

1. MonkeyFlow is given prompt notice in writing of any such claim;

(b) the Customer not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of MonkeyFlow

(c) the Customer provides reasonable co-operation to MonkeyFlow and its professional advisers in the assessment, defence and settlement of such claim, at MonkeyFlow's expense including but not limited to access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer including the right to take copies of the same; and

1. MonkeyFlow is given sole authority to defend or settle the claim.

This Clause shall survive termination of this Agreement

11.4 In the defence or settlement of the claim, MonkeyFlow may obtain for the Customer the right to continue using the Software, replace or modify the Software and/or Content Library so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement without liability to the Customer and refund any Charges for any outstanding period of the Term.

11.5 MonkeyFlow shall have no liability if the alleged infringement is based on:

1. a modification of the Software by anyone other than MonkeyFlow; or
2. the use of the Software by the Customer, the Licensed Users or the Personnel in a manner contrary to the instructions given to the Customer by MonkeyFlow; or
3. the use of the Software by the Customer, or the Personnel after they have been given notice of the alleged or actual infringement from MonkeyFlow or any appropriate authority.
4. MonkeyFlow shall have no liability to the Customer if the Customer does not provide prompt notice in writing of such IP Claim to MonkeyFlow and comply with the provisions of Clause 11.3

11.6 The foregoing provisions of this clause 11 state the Customer´s sole and exclusive rights and remedies, and MonkeyFlow´s entire obligations and liability, for patent, copyright, database or right of confidentiality infringement.

**12. CONFIDENTIALITY AND PUBLICITY**

12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

(a) is or becomes publicly known other than through any act or omission of the receiving party; or

1. was in the other party's lawful possession before the disclosure; or
2. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
3. is independently developed by the receiving party, which independent development can be shown by written evidence; or

(e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

12.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

12.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

12.5 The Customer acknowledges that the Software, the results of any performance tests of the Software and the Services constitute MonkeyFlow's Confidential Information.

## 12.6 Neither party shall make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, by any governmental or regulatory authority (including, without limitation, any relevant securities exchange), or by any court or other authority of competent jurisdiction.

12.7 This clause 12 shall survive termination of this Agreement, howsoever arising.

**13. DATA PROTECTION**

13.1 In this clause:

(a) **Data Protection Legislation:** meansthe UK Data Protection Legislation, any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications;

(b) **Data Controller, Data Processor, Personal Data Breach and Process:** have the meanings respectively given to them in the Data Protection Legislation;

(c) **GDPR**: means General Data Protection Regulation ((EU) 2016/679);

(d) **Personal Data**: has the meaning set out in section 1(1) of the GDPR and relates only to Personal Data, or any part of such Personal Data, of which the Customer is the Data Controller and which MonkeyFlow processes in the course of providing the Services.

(e) **UK Data Protection Legislation:**  means all applicable data protection and privacy legislation in force from time to time in the UK from time to time including the GDPR, UK GDPR, the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

13.2 The Customer shall own all right, title and interest in and to all of the data that is not Personal Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Data.

13.3 MonkeyFlow shall, in providing the Services, comply with its policies relating to the privacy and security as may be notified to the Customer from time to time, as such document may be amended from time to time by MonkeyFlow in its sole discretion.

13.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

13.4 The parties acknowledge that:

(a) if MonkeyFlow processes any Personal Data on the Customer's behalf when performing its obligations under this Agreement, the Customer is the Data Controller and MonkeyFlow is the Data Processor;

(b) the Personal Data may be transferred or stored outside the EEA or the country where the Customer is located in order to carry out the Services and MonkeyFlow's other obligations under this Agreement.

13.5 Without prejudice to the generality of clause 13.4:

(a) the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to MonkeyFlow for the duration and purposes of this Agreement so that MonkeyFlow may lawfully use, process and transfer the Personal Data in accordance with this Agreement on the Customer's behalf; and

(b) MonkeyFlow shall, in relation to any Personal Data processed in connection with the performance by MonkeyFlow of its obligations under this Agreement:

(i) process that Personal Data only as required for the performance of this Agreement;

(ii) not transfer any Personal Data outside of the European Economic Area and the United Kingdom unless:

(A) the Customer or MonkeyFlow has provided appropriate safeguards in relation to the transfer;

(B) the data subject has enforceable rights and effective legal remedies;

(C) MonkeyFlow complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(D) MonkeyFlow complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

(iii) assist the Customer, at the Customer's cost, in responding to any request from a Customer and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(iv) notify the Customer without undue delay on becoming aware of a Personal Data breach; and

(v) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of this Agreement unless required by the Data Protection Legislation or other applicable law to store the Personal Data.

13.6 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (which measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

13.7 The Customer consents to MonkeyFlow appointing third-party sub-processors of Personal Data under this Agreement, provided that MonkeyFlow enters with into a written agreement the third-party sub-processor incorporating terms which are substantially similar to those set out in this clause 13. As between the Customer and MonkeyFlow, MonkeyFlow shall remain fully liable for all acts or omissions of any third-party sub-processor appointed by it pursuant to this clause 13.

13.8 MonkeyFlow may, at any time on not less than 30 days' notice, revise this clause 13 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

**14. LIMITATION OF LIABILITY**

14.1 This clause 14 sets out the entire financial liability of MonkeyFlow (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

(a) any breach of this Agreement;

(b) any use made by the Customer, or the Licensed Users, of the Software or the Services or any part of them; and

(c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

14.2 Nothing in this Agreement excludes the liability of MonkeyFlow:

(a) for death or personal injury caused by MonkeyFlow's negligence; or

(b) for fraud or fraudulent misrepresentation.

1. For any other liability which may not be excluded by law.

14.3 Except as expressly and specifically provided in this Agreement:

(a) the Customer assumes sole responsibility for results obtained from the use of the Software and the Services by the Customer, and the Licensed Users and for any conclusions drawn by them from such use. MonkeyFlow shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to MonkeyFlow by the Customer in connection with the Services, or any actions taken by MonkeyFlow at the Customer's direction; and

(b) all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

1. MonkeyFlow shall have no liability to any third party, client, onward customer or other end-user of any of the Customer’s own products or services that may affected by use of the Software, Content Library, or Services and the Customer confirms it is acting on its own behalf and not for the benefit of any other person

14.4 All dates supplied by MonkeyFlow for the delivery of the Software, or the provision of Services shall be treated as approximate only. MonkeyFlow shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

14.5 Subject to clauses 14.2:

(a) MonkeyFlow shall not be liable for any loss of profits, loss of business, loss of anticipated savings, (d) loss of business opportunity; loss or corruption of data; depletion of goodwill and/or similar losses or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising; and

(b) MonkeyFlow's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the sum paid by the Customer to MonkeyFlow under this Agreement.

15. **DISPUTE RESOLUTION**

15.1 It is the intention of the parties to settle amicably by negotiation all disagreements and differences of opinion on matters of performance, procedure and management arising out of the Agreement. Accordingly, it is agreed that the procedure set out in this clause shall be followed before the serving of written notice terminating the Agreement, or in relation to any matter of dispute between the parties concerning performance, procedure or management.

15.2 If any disagreement or difference of opinion arises out of the Agreement, the matter shall be disposed of as follows:

(a) a representative from MonkeyFlow and the Customer’s Representative shall meet to attempt resolution. Should they not meet within 14 days of the date on which either party convenes a meeting to resolve the matter, or should they not be able to resolve the matter with 14 days of first meeting; then

(b) the matter shall promptly be referred by either party to a nominated Director of the Customer and the Managing Director of MonkeyFlow for immediate resolution.

15.3 If, within 14 days of the matter first having been referred to the Managing Directors of each party no agreement has been reached as to the matter in dispute, the dispute resolution process set out in this clause shall be deemed to have been exhausted in respect of the matter in dispute, and each party shall be free to pursue the rights granted to it by the Agreement in respect of such matter without further reference to the dispute resolution process.

15.4 For the avoidance of doubt, this clause shall not prevent either party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or any infringement by the other of the first-named party's Intellectual Property Rights or MonkeyFlow seeking to recover Charges from the Customer that have not been paid as of the due date for payment and in relation to which no substantive dispute has arisen or been notified to MonkeyFlow.

**16. TERM AND TERMINATION**

16.1 This Agreement shall commence on the date of signature date and, unless otherwise terminated as provided in this clause 16, shall continue for the Term.

16.2 MonkeyFlow may terminate this Agreement without liability to the Customer if the Customer:

(a) fails to pay any amount due to MonkeyFlow under this Agreement within 30 days of the due date for payment; or

(b) suffers a change of control within the meaning of section 840 of the Income and Corporation Taxes Act 1988.

16.3 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:

(a) the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

(b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or

(c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

(d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or

(e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or

(f) the other party ceases, or threatens to cease, to trade; or

(g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

16.4 On expiration or termination of this Agreement for any reason:

(a) all licences granted under this Agreement shall immediately terminate with immediate effect;

(b) each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;

(c) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

**17. NOTICES**

17.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as may be used by it to contact the other party from time to time in relation to this Agreement.

17.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender) provided that no error report, bounceback or autoreply is received by the sender.

**18. MISCELLANEOUS AND GENERAL**

18.1 MonkeyFlow shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of MonkeyFlow or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Suppliers or sub-contractors, provided that the Customer is notified of such act, event, omission or accident and its expected duration.

18.2 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

18.3 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

18.4 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

18.5 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

18.6 MonkeyFlow may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement, but the Customer shall not, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement without the prior written consent of MonkeyFlow.

18.7 Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

18.8 This Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

18.9 This Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England, and the parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any such dispute or claim.

18.10 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18.11 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

18.12 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement

18.13 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 12 weeks, the party not affected may terminate this Agreement by giving 30 days written notice to the affected party

18.14 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

18.15 This licence has been entered into on the date of the final signature of the same.

TWM Solicitors LLP

65 Woodbridge Road

Guildford

Surrey GU1 4RD

Tel: 01483 752700

[www.twmsolicitors.com](http://www.twmsolicitors.com)