CLIPFLIP INTERACTIVE VIDEO TECHNOLOGY

Terms of Use & Terms and Conditions & Service Level Agreement

How to contact us:

- **Enquiries and Technical support:** hello@clipflip.video

- **Billing:** hs@tmse.at

Background

(A) This Service is provided by Clipflip Interactive Video Technology GmbH, Gymnasiumgasse 2, 6800 Feldkirch, AUSTRIA CEO: Michael Sturm, Registration Number: 568113k, Landesgericht Feldkirch / Austria, UID: ATU77482902 ("**Clipflip**").

(B) Clipflip has developed certain software applications and platforms which it makes available to customers on a SaaS basis.

(C) The Customer wishes to use Clipflip's services in relation to its business operations.

(D) Clipflip has agreed to provide, and the Customer has agreed to use Clipflip's services subject to the terms and conditions of this Agreement.

1. **Interpretation**

1.1. In this Agreement, unless the contrary intention appears:

"**Agreement**" means these terms and conditions together with all the recitals, clauses, schedules, annexes and all other documents referred to herein;

"**Authorised Users**" means **the Customer and/or** those employees, agents and contractors of the Customer who are authorised by the Customer to use the Services;

"**Customer**" means the company or other legal person or entity identified on the Insertion Order Form or Trial;

"**Customer Data**" means all information, data, content or other materials inputted into or processed using the Platform by the Customer its Authorised Users, or otherwise on its behalf, including from any Customer System;

"**Customer Materials**" means all materials, video, text, pictures, images, sound, graphics, data, information, logos or other materials supplied by the Customer in whatever form and/or used in connection with the creation of Customer Video(s), and amendments to or versions of the Customer Materials created by Clipflip;

"**Customer System**" means the Customer's own system, CMS or other functionality that it may wish to use to interact with and input information, including Customer Data, into the Platform, and/or use to host and play the Customer Video.

"**Customer Video(s)**" means the interactive videos created using the Platform and or the Interactive Video Technology.

"**Fees**" means the fees for the Services as specified in the separate Insertion Order Form;

"**Hosting Package**" means a hosting only service to facilitate playback of the Customer Video, made available by Clipflip as may be itemised in an Insertion Order Form and/or SOW;

"Intellectual Property Rights" means all intellectual property rights, howsoever arising and in whatever media, whether or not registered or capable of registration, including copyright, database rights, confidential information, patents, trademarks, service marks, trade names, design rights, moral rights, business names, domain names and other similar rights and any applications for the protection or registration of these rights and all renewals and extensions thereof throughout the world;

"Laws" means any applicable legislation, regulation, by law, ordinance, subordinate legislation, code of practice, published guidance and other requirement of any relevant government or governmental agency;

"Insertion Order Form" means the specific order for a Subscription for the Services agreed between the parties;

"Platform" means the Clipflip software platform via which the Platform Services are made available, and or the Licensed Items, and all versions, amendments and improvements thereto and/or any other tools, methods, models, know how, code, functionality or other elements owned or developed by Clipflip including during the provision of the Services;

"Platform Data" means all usage and/or statistical or other data, information, learnings or know how related to and/or derived from the use of the Platform by customers and users, only in anonymised and aggregated form, and at all times not including Customer Data or Customer Confidential Information.

"Platform Services" means the SaaS and other services provided by Clipflip via the Platform including access to and use of the Subscription Package, Hosting Package, or other packages as further set out in the Insertion Order Form;

"Services" means any services to be supplied by Clipflip under this Agreement as itemised in the Insertion Order Form being the Platform Services, and/or any Interactive Video Technology;

"SOW / Statement of Work" means the statement of work detailing any further Interactive Video Technology to be provided under an Insertion Order Form, as set out in the relevant exhibit thereto.

"Interactive Video Technology" means the bespoke creative services, and/or any consultancy services to be supplied by Clipflip as may be further specified in an SOW to an Insertion Order Form if applicable.

"Subscription Package(s)" means the relevant level or tier of package and usage made available under this Agreement as itemised in an Insertion Order Form;

"Subscription Period" means the relevant subscription period as set out in the Insertion Order Form;

"Subscription Start Date" means the relevant start date as set out in the Insertion Order Form;

"Service Level Agreement / SLA" means the service level agreement in accordance with which the Platform Services will be supplied by Clipflip as specified in Schedule 1.

"Term" means the term of the Agreement as provided for in clause 14;

"Third Party Items" means third party hardware, software, services, content, assets or other third party materials, items or rights used by Clipflip in the provision of the Services.

"Trial" means temporary trial access to the Platform on a limited basis at Clipflip's discretion.

"Trial Start Date" means the relevant start date when a Trial is activated by Clipflip.

"Virus" means any "back door", "Trojan Horse", "time bomb", "worm", "drop dead device", "virus" or other software intended or designed, or having the effect, to disable, erase, corrupt, destroy or otherwise damage or interfere with, or provided unauthorised access to, computer systems or any software stored on those computer systems;

"Working Day" means any day other than a Saturday, a Sunday or a day which is a public or bank holiday in Europe.

1.2.   In this Agreement, unless the context otherwise requires:

(a)   words importing a gender include any other gender;

(b)   words in the singular include the plural and vice versa;

(c)   a reference to a person shall include a company, partnership, joint venture, association, corporation or other body corporate;

(d)   a reference to any Law or standard shall include a reference to that Law or standard as amended, extended, consolidated or re-enacted from time to time;

(e)   a reference to a document shall include all authorised amendments, supplements to and replacements to that document;

(f)   a reference to the parties shall include their permitted successors and assigns;

(g)   where a word or a phrase is given a particular meaning, other grammatical forms of that word or phrase shall have corresponding meanings; and

(h)   the words 'include', 'including', 'for example' or similar words shall be construed as illustrative and without limitation to the generality of the related words.

1.3.   The headings are inserted for convenience only and shall not affect the construction of this Agreement.

1.4.   Unless otherwise stated a reference to a clause or a schedule or a party is a reference to a clause in or a schedule to or a party to this Agreement.

1.5.   This Agreement was drafted with the joint participation of the parties and no provisions of this Agreement will be construed adversely to a party solely on the ground that such party was responsible for the preparation of this Agreement.

1.6.   In the event of any conflict between the terms of the Terms of Use general terms and an Insertion Order Form or SoW, the Terms of Use general terms will take precedence save to the extent specifically amended by the Insertion Order Form or SoW.

2.   ORDERS, SUBSCRIPTIONS OR TRIALS

SUBSCRIPTIONS

2.1.   Subject to the parties provisionally agreeing details relating to the Services, Subscription Period, Fees and other deal terms, Clipflip will issue the Customer with an offer in the form of an Insertion Order Form for signature.

2.2.   No request for a subscription submitted by a prospective customer nor Insertion Order Form issued by Clipflip is effective until Clipflip has received a signed copy of the Insertion Order Form from the Customer. Subject to the above, the signed Insertion Order Form will incorporate these Terms of Use and form the Agreement that is binding on the parties.

TRIALS – *provided AS IS with no obligation, warranty or liability.*

2.3.   In the event that Clipflip provisionally agrees to provide the Customer with a Trial, the Customer must complete the relevant registration details on the Insertion Order, or

elsewhere as directed by Clipflip. The Customer is required to accept these Terms of Use as a condition of that application for a Trial and the provision of the Trial.

2.4. No request for a Trial submitted by a prospective customer is effective until Clipflip has actively accepted the application and activated the Trial. Subject to the above, the Trial terms will incorporate these Terms of Use (as amended in clause 2.5) and form the Agreement that is binding on the parties.

2.5. Notwithstanding any other provisions, the Trial, and related trial access to the Platform, is provided AS IS, at the discretion of Clipflip, with no commitment, warranty or liability on the part of Clipflip. In particular (but without limitation), the following clauses are excluded: 3.2, 6.1, 6.2, 6.3, 6.6, 9, 11.1. Use of the Platform and receipt of any Services during the Trial is entirely at the Customer's risk.

2.6. At the end of the Trial, access to the Platform and provision of any Services will cease and there will be no roll over of these terms. The parties may agree a paid subscription, subject to executing an Insertion Order Form as above.

3. PLATFORM SERVICES AND LICENCE

3.1. Subject to the execution of a relevant Insertion Order Form, and receipt of the Fees, (or agreement to provide a Trial) Clipflip will provide the Platform Services and grants to the Customer a non-exclusive, non-transferable, royalty free licence to access and use the Platform, in accordance with the permissions, restrictions and other details set out in the Insertion Order Form solely for the Customer's own business purposes and subject to the terms and conditions of this Agreement.

4. CREATIVE SOLUTIONS SERVICES

4.1. Subject to being itemised in, and the execution of a relevant Insertion Order Form, and receipt of the Fees, Clipflip will provide the Creative Solutions Services.

4.2. The Creative Solutions Services will be provided in accordance with the details set out in the SOW exhibit to the relevant Insertion Order Form.

4.3. Relevant deliverables, specifications, project schedules, acceptance criteria, acceptance testing and other details and requirements will be detailed as appropriate in any SoW.

5. LICENSED ITEMS

5.1. In the event that any Licensed Items are made available to the Customer, Clipflip grants to the Customer non-exclusive, non-transferable, royalty free licence to use the Licensed Items as follows:

In the event any licensed Items are incorporated into or are used in conjunction with the Platforms, or are used for the purposes of providing the Services, then Clipflip grants (or shall procure the grant) to the Customer a non-exclusive, non-transferable, royalty-free right to use such Third Party Items for the purposes of receiving the Services, which shall be subject to any Fees identified in the Insertion Order Form or otherwise notified to the Customer.

6. CLIPFLIP'S OBLIGATIONS AND WARRANTIES

6.1. Clipflip shall perform the Services with reasonable skill and care and in accordance with good industry practice; and will comply with all applicable Laws with respect to its activities under this Agreement.

6.2. Clipflip warrants and represents that:

(a) it has full right, power and authority to enter into this Agreement;

(b)   it has all the rights, licences, permits, approvals and clearance of third party rights as required by the Laws and as are necessary to perform its obligations and grant the relevant rights under this Agreement;

(c)   the Platform and/or Services will, to the best of its knowledge, contain nothing that infringes the statutory, common law, or Intellectual Property Rights of any third party.

6.3.   Clipflip's obligations and warranties with regard to Platform, and/or Services and other provisions of this Agreement shall not apply to the extent of any non-conformance which is caused: by use contrary to the terms of the Agreement and/or Clipflip's reasonable instructions; by modification or alteration of the Customer Video by any party other than Clipflip or Clipflip's duly authorised contractors or agents; by combination or integration with any third party or Customer systems or services contrary to the terms of the Agreement; by the Customer Data, Customer Materials, Customer System; or by other Customer breach of the Agreement.

6.4.   In any event, Clipflip:

(a)   does not warrant that the Customer's use of the Platform and/or Services will be uninterrupted or error-free; and

(d)   is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Platform and/or Services are dependent on various third party networks, platforms, services, infrastructures and API's, and as such Clipflip can give no guarantee of availability or functionality, and the Platform and/or Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities and third party networks, platforms, services, infrastructures and API's; and

(e)   makes no warranties or other assurances as to the fitness for purpose of the Platform, Subscription Package, Hosting Package and/or Services nor that they will meet the Customer's requirements or produce any specific business benefits or have any particular effectiveness nor create any revenue or other benefits.

6.5.   All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement whether by statute, common law or otherwise, are hereby excluded to the fullest extent permitted by law, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality and fitness for purpose.

7.   CUSTOMER'S OBLIGATIONS AND WARRANTIES

7.1.   The Customer shall:

(a)   provide Clipflip with all necessary co-operation in relation to its respected IO and if self-service is not required, and all necessary access to such information as may be required by Clipflip in order to render the Managed - Services.

(b)   carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner (other than making payment which shall be as required under clause 9). In the event of any delays in the Customer's provision of such assistance, Clipflip may adjust any timetable or delivery schedule set out in this Agreement as reasonably necessary;

(c)   and hereby does accept responsibility for the selection of the Platform, Subscription Package, Hosting Package and/or Services to achieve its intended results;

(d)   comply with all applicable Laws with respect to its activities under this Agreement; and

(e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Clipflip, its contractors and agents to perform their obligations under this Agreement.

7.2. In relation to the Authorised Users, the Customer shall:

(a) not provide access to the Platform other than to its Authorised Users;

(b) procure that each Authorised User keeps secure the password and account details for their use of the Platform, and that such password is kept confidential;

(c) be responsible for all activities that occur under the Customer's account, and for any access to or use of the Platform including submission of Customer Data or other data by any person or entity using the account or any password whether or not such access, submission or use has been authorised by the Customer;

(d) if it believes that there has been any breach of security such as the disclosure, theft or unauthorised use of any username or password, notify Clipflip immediately;

(e) ensure that the Authorised Users, are notified of the relevant terms and conditions, rules or restrictions relating to their usage and access of the Platform and/or Services, and in any event that they use the Platform and/or Services in accordance with the terms and conditions of this Agreement, and the Customer shall be responsible for any Authorised User's breach of this Agreement.

7.3. The Customer shall not and shall not permit any third party to:

(a) attempt to download, copy, modify, create derivative works from, frame, mirror, republish or distribute any portion of the Platform except to the extent expressly set out in this Agreement; or

(b) attempt to copy, adapt, decompile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Platform, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or

(c) access the Platform in order to build a product or service which competes with the Platform and/or the Services;

(d) resell, sublicense or otherwise use the Platform and/or Services to provide services to third parties, unless otherwise specifically agreed in writing; or

(e) attempt to obtain, or assist third parties other than Authorised Users, in obtaining, access to the Platform.

7.4. The Customer shall ensure that it takes all necessary steps to prevent any unauthorised access to, or use of, the Platform and notify Clipflip immediately of any such unauthorised access or use.

7.5. The Customer shall not access, store, distribute or transmit any Viruses into or via the Platform and/or Services.

7.6. The Customer warrants and represents that:

(a) it has full right, power and authority to enter into this Agreement;

(b) it has all the rights, licences, permits, approvals and clearance of third party rights as required by the Laws and as are necessary to perform its obligations under this Agreement;

(c) the Customer Data and / or Customer Materials , and its use on the Platform will not, to the best of its knowledge, infringe the statutory, common law, or Intellectual

Property Rights or any other right, title or interest, of any third party, and the same shall not, nor shall it otherwise use the Platform or Services in a way that could be unlawful, harmful, threatening, defamatory, obscene, indecent, infringing, discriminatory, hateful, abusive, harassing or racially or ethnically offensive, facilitate illegal activity, promote unlawful violence, or be in breach of any confidentiality.

7.7. Without express written approval, the Customer Data and/or Customer Materials shall not contain, nor shall any use of the Platform process or otherwise deal with:

(a) any "sensitive personal data" such as racial or ethnic origin, political opinions, religious beliefs, sexual orientation.

7.8. The Customer specifically acknowledges and agrees that, despite the provision by Clipflip of any Interactive Video Technology, but subject to the warranties in 6.2(c):

(a) Clipflip has no responsibility or liability for the Customer Videos including but not limited to any rights, clearances or other compliance of the content therein;

(b) the Customer has sole responsibility and liability for the Customer Videos including but not limited to selection, editorial decisions, rights and other clearances, and/or other compliance, and all other aspects of the Customer Video;

(c) as between the Customer and Clipflip, the Customer is deemed to be the producer and publisher of all Customer Videos or has the proprietary rights to use the video.

7.9. The Customer specifically acknowledges and agrees that it has full responsibility for informing and directing Clipflip in relation to any industry or content specific laws, regulations, directives, policies, protocols and best practices that are unique to Customer's products and/or services that need to be considered in relation to the Services and creation of the Customer Videos. Clipflip shall implement and comply with Customer's written directions in relation to any such industry or content specific laws, regulations, directives, policies, protocols and best practices Notwithstanding the above, Customer is responsible for approval of and ensuring compliance of the Customer Video in accordance with such industry or content specific laws, regulations, directives, policies, protocols and best practices that are unique to Customer's products and/or services.

7.10. Notwithstanding any of the above, Clipflip reserves the right to remove or block Customer Data, Customer Materials and/or Customer Videos from the Platform in the event that in its reasonable opinion it breaches the terms of this Agreement.

7.11. The rights and services provided under this Agreement are granted to the Customer only, and shall not be considered granted to any subsidiary, affiliate or holding company of the Customer.

7.12. Customer shall obtain and maintain the insurance as is necessary to cover its liabilities under this Agreement and as required by law with a reputable insurer and provide details and evidence of the insurance to Clipflip on request during the Term.

8. DATA PROTECTION

8.1. References in clause to "data controller", "data processor", "processing", "data protection officer" and "personal data" shall have the same meaning as defined in Data Protection Legislation.

8.2. During the term of the Agreement, the parties acknowledge and agree Clipflip may access, receive, generate, store and/or otherwise process personal data relating to the Customer's clients of other data subjects of the Customer in order to provide the Services to Customer,

and/or otherwise fulfil its obligations, under and in accordance with, this Agreement. The type of personal data that Clipflip may be required to process under this Agreement includes for example names, addresses email addresses or other contact information, or other information through which the data subject may be identifiable.

8.3. The parties agree that in respect of any personal data processed in connection with this Agreement that Customer shall be the "data controller" and Clipflip or Sub Processor shall be the "data processor".

8.4. Each party acknowledges and agrees that each party has respective rights and obligations under applicable Data Protection Legislation. Clipflip shall, without prejudice to its other rights or obligations, in respect of its processing of such personal data:

(a) process the data only to the extent, and in such a manner, as is necessary for the purposes of this Agreement and in accordance with Customer's lawful written instructions from time to time and Clipflip shall not process, nor permit the processing, of the data for any other purpose. If Clipflip is unsure as to the parameters of the instructions issued by Customer and/or believes that Customer's instructions may conflict with the requirements of Data Protection Legislation, Clipflip may notify Customer for clarification;

(b) ensure the reliability of all its personnel who have access to the data and shall in particular ensure that any person authorised to process data in connection with this Agreement is subject to a duty of confidentiality;

(c) at Customer's cost provide Customer with reasonable co-operation and assistance in relation to Customer's obligations and rights under Data Protection Legislation including providing Customer and relevant Regulators (as applicable) with all information and assistance reasonably necessary to investigate Security Breaches, carry out privacy impact assessments or otherwise to demonstrate compliance by the parties with Data Protection Legislation and assisting Customer by using appropriate technical and organisational measures in responding to, and complying with, data subject requests.

(d) having regard to the state of technological development and the cost of implementing any measures, take such technical and organisational measures against the unauthorised or unlawful processing of data and against the accidental loss or destruction of, or damage to data, to ensure a level of security appropriate to: a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage of the data; and b) the nature of the data to be protected;

(e) at Customer's expense, without undue delay notify Customer, and provide such co-operation, assistance and information as Customer may reasonably require if Clipflip:

(i) receives any complaint, notice or communication which relates directly or indirectly to the processing of the personal data under this Agreement or to either party's compliance with Data Protection Legislation; and/or
(ii) becomes aware of any Security Breach;

(f) keep at its normal place of business a written record of any processing of the data carried out in the course of the Services ("Records");

(g) permit no more than once per year Customer, after the Client is working with ClipFlip already 12 month, its third-party representatives (who is not a competitor of Clipflip) or a Regulator, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this clause by Clipflip, access to inspect, and take copies of, the Records for the purpose of auditing Clipflip's compliance with

its obligations under this clause. Clipflip shall at Customer's cost give all reasonably necessary assistance to the conduct of such audit;

(h) may engage sub processor(s) to process data (or otherwise sub-contract or outsource the processing of any data to a third party) (a "Sub processor"), provided that it:

    (i) notifies Customer of any new or replacement Sub processors. If Customer objects to the appointment of a new or replacement Sub processor, it shall notify Customer within five business days.

    (ii) enters into a written contract with the Sub processor that:

        (1) provides protections or guarantees that Sub processor considers necessary to implement appropriate technical and organisation measures in compliance with the Data Protection Legislation; and

        (2) terminates automatically on termination or expiry of this Agreement for any reason; and

    (iii) remains liable for all acts or omissions of the Sub processors as if they were acts or omissions of Clipflip (except to the extent caused or exacerbated by Customer).

It is acknowledged that currently approved Sub-Processors are:

- MUX which is not collecting any personal data but is used for the video encoding, storage and delivery: **https://mux.com/dpa**
- Firebase – Database hosting Frankfurt : **https://firebase.google.com/terms, https://firebase.google.com/support/privacy**
- Zendesk support requests : **https://www.zendesk.com/company/legal/**
- Postmark – email notifications : **https://postmarkapp.com/terms-of-service; https://wildbit.com/privacy-policy**
  Mailchimp (Part of Intuiut) – newsletter : https://mailchimp.com/legal/; https://www.intuit.com/privacy/statement/

(i) at Customer's cost return or destroy (as directed in writing by Customer) all personal data it has in its possession and delete existing copies unless applicable law requires storage of the personal data.

(j) Clipflip will not transfer personal data pursuant to this Agreement to a territory outside of the European Economic Area ("EEA") without Customer's consent or instruction. To the extent that Clipflip is required to transfer personal data pursuant to this Agreement to a territory outside of the EEA that does not have a finding of adequacy by the European Commission, the parties shall execute or procure the execution of the standard contractual clauses set out in Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC ("Model Clauses") unless the parties agree another more appropriate lawful data transfer mechanism exists. The parties agree that if the Model Clauses (or agreed alternative mechanism) cease to exist or are no longer considered by both parties to be a lawful method of transferring personal data outside of the EEA, the parties shall have a good faith discussion and agree an alternative lawful transfer mechanism and Clipflip may cease or procure that the relevant third party cease the processing of personal data until such time as the parties have agreed an alternative transfer mechanism to enable the personal data to be transferred outside of the EEA in a compliant manner.

8.5   Customer agrees to comply with its obligations under applicable Data Protection Legislation and shall in particular ensure that it has appropriate consents, permission or other ability to process personal data and that Clipflip is lawfully permitted to process personal data on its behalf, and will not give Clipflip any instructions that would cause Clipflip to be in breach of the Data Protection Legislation.

8.6   For the purpose of this clause:

"**Data Protection Legislation**" means Data Protection Act 2018, the EU Data Protection Directive 95/46/EC, the GDPR (the EC Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (when in force), the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable, any guidance notes and codes of practice issued by the European Commission and applicable national Regulators including the UK Information Commissioner; "**Regulator**" means any regulatory body with responsibility for ensuring compliance with Data Protection Legislation.

"**Security Breach**" means accidental or deliberate, unauthorised or unlawful acquisition, destruction, loss, alteration, corruption, access, use or disclosure of personal data processed under to this Agreement or breach of Clipflip's security obligations under this Agreement.

9.   FEES AND PAYMENT

9.1.   The non-refundable Fees to be paid by the Customer to Clipflip for providing the Services are those stated in the Fees Section of the Insertion Order Form and/or SoW.

9.2.   The Fees may be changed by agreement during the Term in the event that the Customer wishes to change the type or level of Services provided.

9.3.   All sums payable under the Agreement will be paid by electronic transfer to Clipflip's bank account or such bank account Clipflip may specify from time to time. Any charges on payments will be at the Customer's expense.

9.4.   All sums payable under the Insertion Order are exclusive of VAT which will be payable in addition to the sum in question at the rate and in the manner prevailing at the relevant tax point.

9.5.   Fees and expenses are payable within 15 days of Customer's receipt of Clipflip's properly submitted invoice.

9.6.   If any sums due under this Agreement are not paid when due Clipflip may charge interest in respect of those sums from the date due until payment is made in full (before and after any judgment) at 4% per annum over Barclays Bank Plc base rate from time to time accruing on a daily basis, and Clipflip may suspend the Customer's access to the Platform and/or Services.

10.   INTELLECTUAL PROPERTY RIGHTS

10.1.   The Customer acknowledges and agrees that Clipflip and/or its licensors own all Intellectual Property Rights in the Platform, Services, Platform Data and Third Party Items. Except as stated in this Agreement Clipflip does not grant the Customer any rights in respect of the Platform, Services, Platform Data and/or Third Party Items or any related documentation.

10.2.   Clipflip acknowledges and agrees that the Customer and/or its licensors own all Intellectual Property Rights in the Customer Data and Customer Materials, save for the avoidance of

doubt in any elements relating to the Platform, Platform Data and Third Party Items. To the extent necessary to effect such ownership, Clipflip by way of future assignment hereby assigns, subject to payment of the relevant Fees, all such Intellectual Property Rights to the Customer throughout the world in perpetuity. Except as stated in this Agreement the Customer does not grant Clipflip any rights in respect of the Customer Data or Customer Materials.

11. INDEMNITIES

11.1. Clipflip will indemnify the Customer from and against any and all losses, damages, claims, costs and expenses (including reasonable external legal expenses) suffered or incurred by or awarded against the Customer arising from any third party claims or actions as a result of or in connection with any breach by Clipflip of clause 6.2.

11.2. The Customer will indemnify Clipflip from and against any and all losses, damages, claims, costs and expenses (including reasonable external legal expenses) suffered or incurred by or awarded against Clipflip arising from any third party claims or actions as a result of or in connection with any breach by the Customer of clause 7.6.

11.3. Each Party will fully indemnify the other from and against any and all losses, damages, claims, costs and expenses (including reasonable external legal expenses) suffered or incurred by or awarded against the other as a result of or in connection with:

(a)   any breach by the other of clause 12 (Confidentiality);

(b)   any breach by the other of clause 8 (Data Protection).

11.4. In all cases the indemnified party agrees to:

(a)   promptly notify the indemnifying party of any allegation of infringement which comes to its attention and give the indemnifying party all reasonable assistance;

(b)   make no admission relating to any infringement or alleged infringement; and

(c)   allow the indemnifying party to conduct and settle all negotiations and proceedings, save that the indemnifying party may not conclude settlement of any negotiations and proceedings which may have a material effect (whether financial, practical or in terms of reputation) on the indemnified party without the indemnified party's prior written consent which will not be unreasonably withheld.

12. CONFIDENTIALITY

12.1. Neither party shall without the consent of the other during the term of this Agreement or following its termination use the other party's "Confidential Information" (meaning all information in any form which is secret or not publicly available either in its entirety or in part including commercial, financial, marketing, or technical information, know how, trade secrets, business methods and other information in any form, and any reproductions of such information in any form or any part(s) of this information) for any purpose other than as strictly necessary in connection with this Agreement nor disclose to any other person unless necessary for the performance of obligations under this Agreement.

12.2. Any party disclosing Confidential Information in accordance with the above clause shall procure that the person to whom such information is disclosed is made aware of the obligations of confidentiality under this Agreement and complies with those obligations as if it were a party to this Agreement.

12.3. The confidentiality restrictions do not apply to Confidential Information:

(a) which is in or comes into the public domain other than through breach of this Agreement;

(b) insofar as it comes lawfully into the possession of the recipient party from a third party;

(c) which the recipient party can prove was already known to it before its receipt from the providing party;

(d) to the extent that it is required to be disclosed by law or the requirements of any recognised stock exchange, or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of law.

12.4. Clipflip acknowledges that the Customer Data is the Confidential Information of the Customer.

12.5. The Customer acknowledges that details of this Agreement, Fees, Platform and/or the Services, are the Confidential Information of Clipflip.

13. LIMITATION OF LIABILITY

13.1. Nothing in this Agreement shall in any way exclude or limit either party's liability for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation or for any other liability which may not be excluded by law.

13.2. Subject to clause 13.1, neither party will be liable, whether in contract, tort (including negligence) breach of statutory duty, or otherwise, for any of the following losses or damage (whether or not such losses or damage were direct, foreseen, foreseeable, known or otherwise) howsoever arising in respect of any:

(a) special, indirect, incidental or consequential loss or damage;

(b) loss of actual or anticipated profits;

(c) loss of business or contracts;

(d) loss of revenue or of the use of money;

(e) loss of anticipated savings;

(f) loss of goodwill; and/or

(g) loss of data;

arising out of or in connection with this Agreement.

13.3. Subject to clause 13.1 and clause 11 (Indemnities) (other than clause 11.3 (b) as capped below) for which there will be no cap on liability, each party's total aggregate liability arising out of, or in connection with this Agreement whether in contract, tort (including negligence) breach of statutory duty, or otherwise, shall:

(a) in relation to the indemnities in clause 11.3(b) (data protection) be capped at Euro 1, 000 (one thousand euro);

(b) otherwise in no event exceed the annual monthly minimum fee Fees paid by the Customer in the previous 12 months.

13.4. If at any time an allegation of infringement is made in respect of the Platform and/or Services, Clipflip may at its own expense:

(a) modify the Platform and/or Services;

(b) replace the Platform and/or Services with non-infringing software or Services; and/or

(c)   require the Customer to alter the way in which it uses the Platform and/or Services,

so as to avoid the infringement or alleged infringement, in all cases without diminishing or curtailing any of the material functions or facilities or the performance of the Platform and/or Services. If it is unable to do the above, Clipflip may terminate this Agreement and refund pro rata to the Customer such part of any sums paid by the Customer which relate to the unexpired portion of the Agreement ????

14.   TERM AND TERMINATION

14.1.   This Agreement shall, commence on the Subscription Start Date (or Trial Start Date as applicable) and shall continue as provided in clause 14.2 and 14.3 until terminated as provided herein.

14.2.   Each Insertion Order Form will have its own Subscription Period as set out in the relevant Insertion Order Form. Any Trial will be until written in the Insertion Order, unless determined otherwise at Clipflip's sole discretion. Trials will not auto renew or roll over.

14.3.   The Subscription Period will be automatically renewed for successive periods equivalent to the Subscription Period (each a "**Renewal Period"**), unless either party notifies the other party of termination, in writing, at least 30 days before the end of the Subscription Period or any Renewal Period, in which case this Insertion Order Form shall terminate upon the expiry of the applicable Subscription Period or Renewal Period.

14.4.   Either party (the "**Terminating Party**") may terminate this Agreement immediately by giving written notice to the other (the "**Defaulting Party**") if:

(a)   the Defaulting Party is in material breach of any provision of this Agreement which is not remediable or, if remediable, is not remedied with a period of 20 Working Days after the Terminating Party has given notice to the Defaulting Party requiring such breach to be remedied;

(b)   the Defaulting Party's financial position is such that either the Defaulting Party, its directors, shareholders or creditors take or are entitled to take steps to institute formal insolvency proceedings with respect to the Defaulting Party of a type provided for by the Insolvency Act 1986 (or any similar or analogous legislation, whether under law or otherwise), including without limitation administration, liquidation, administrative receivership, receivership, voluntary arrangement, scheme of arrangement or bankruptcy, or if the Defaulting Party is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

14.5.   Clipflip may terminate this Agreement by giving not less than 14 days' written notice to the Customer if the Customer fails to make any overdue payment to Clipflip within 30 days of the Customer receiving a written notice from Clipflip demanding such overdue payments.

14.6.   If Clipflip terminates this Agreement under clause 14.4 all fees that would have been payable up to the date of the next anniversary of the Agreement will immediately become due and be payable within 7 days.

14.7.   On termination of this Agreement for any reason:

(a)   all licences granted under shall immediately terminate;

(b)   the Customer shall return and make no further use of the Platform documentation and other items (and all copies of them) belonging to Clipflip;

(c)   Clipflip may destroy or otherwise dispose of any of the Customer Data in its possession unless Clipflip receives, no later than ten Working Days after the effective date of the termination, a written request for the delivery to the Customer of the then most

recent back-up of the Customer Data. Clipflip shall use reasonable commercial endeavours to deliver the back-up to the Customer within 90 days of its receipt of such a written request, provided that the Customer has, at that time, paid all Fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Clipflip in returning or disposing of Customer Data;

(d) 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; and

(e) Customer shall promptly pay all undisputed Fees related to the period prior to termination, including relating to Services provided and not yet invoiced on a pro rata basis.

14.8 In the event that hosting is provided as part of the Platform Services, notwithstanding the expiry of the Subscription Period, the Customer Video will be hosted by Clipflip, and the Customer will have playback (only) access to the Customer Video, for up to 1 (one) months after the end of the Subscription Period, or longer at Clipflip's discretion accordingly to the mentioned delivery costs in the Client IO.**?**

15. FORCE MAJEURE

15.1. Neither party shall have any liability or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party including, without limitation, any of the following: power failure, act of God, governmental act, war, fire, flood, explosion or civil commotion. The party affected by such circumstances shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.

15.2. If an event of force majeure occurs and lasts for more than 90 days either party may give written notice to the other to terminate this Agreement and neither party will have any liability to the other except that the Customer will remain liable for any unpaid fees.

16. WAIVER

The failure or delay by either party in any one or more instances to insist upon strict performance or observance of any one or more of the terms of this Agreement or to exercise any remedy, privilege or right provided by law or under this Agreement shall not be construed as a waiver of any breach or right to enforcement of such terms or to exercise such remedy, privilege or right.

17. SEVERANCE

If any part of this Agreement is found by any court or competent authority to be illegal, void or unenforceable then that part shall be deemed not to be a part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.

18. ASSIGNMENT AND SUBCONTRACTING

Neither party shall, without the prior written consent of the other assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

19. VARIATION

This Agreement may not be varied except by an instrument in writing signed by the authorised representatives of all the parties to this Agreement.

20. RELATIONSHIP BETWEEN THE PARTIES

Nothing in this Agreement shall be deemed to constitute a partnership or joint venture or contract of employment between the parties nor constitute either party the agent of the other.

21. RIGHTS OF THIRD PARTIES

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

22. PUBLICITY

22.1. Neither party shall make or issue any announcement/press release or public circular relating to the subject matter of this Agreement without the prior written approval of the other.

22.2. Clipflip may use the name of Customer and samples of the services provided and/or deliverable created by Clipflip or Customer as a factual reference to the fact that the Customer is or was a customer, on its website and in pitch materials, only with the prior written consent of Customer, any use of the Customer's logo shall be subject to any brand guidelines issued by the Customer, if there are no brand guidelines, Customer has to approve the usage of the logo.

23. NOTICES

23.1. Each notice or other communication to be given under this Agreement shall be given in writing in English and, unless otherwise provided, shall be made by hand, letter or email and will be addressed to the other party's contact as stated in the Insertion Order Form or other contact as agreed from time to time.

23.2. Notice delivered by hand will be deemed to have been received when delivered. Posted notice will be deemed received at the time at which it would have been delivered in the normal course of the post. Any notice given in accordance with the above but received on a day which is not a business day or after normal business hours in the place of receipt shall be deemed to have been received on the next business day.

24. ENTIRE AGREEMENT

24.1. This Agreement, and any documents explicitly 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 and/or any purchase order terms from the Customer.

24.2. 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.

25. GOVERNING LAW AND JURISDICTION

This Agreement and any disputes relating to it will be governed by and construed in accordance with European Union law and the parties submit to the exclusive jurisdiction of the EU courts for such purposes.