

**TERMS AND CONDITIONS APPLICABLE TO THE WORKFLOW PLATFORMS**

**1 GENERAL**

- 1.1 In this document the following words shall have the meaning ascribed to them:
- 1.1.1 **"CMS"** means our Content Management System located at <https://www.workflow.tv/login>;
- 1.1.2 **"CMS Subscriber"** means a User who has subscribed to our CMS Services by concluding a Subscription Agreement with us;
- 1.1.3 **"Parties"** means Workflow and the User and **"Party"** means either one of them;
- 1.1.4 **"Platforms"** means CMS, the <https://www.workflow.tv> website, the web application "Workflow" and the mobile app "Workflow";
- 1.1.5 **"Services"** means all the services offered via our Platforms;
- 1.1.6 **"Subscription Agreement"** means an agreement concluded between Workflow and the CMS Subscriber in writing or via the System for the provision by Workflow to the CMS Subscriber of the Services for the Subscription Period, including by way of selecting "create job" on the CMS Platform;
- 1.1.7 **"Subscription Period"** means the subscription period applicable to the CMS Subscriber as more fully set out in its Subscription Agreement;
- 1.1.8 **"System"** means the intellectual property, software, hardware, materials and all other third party software, electronic, computer, telecommunication devices and other equipment used by Workflow and/or its sub-contractor(s) for the provision of the Platforms and the Services including any and all interfaces to the equipment for the purpose of interacting with the User;
- 1.1.9 **"Terms"** means the terms and conditions of use of the System as set out in this document and as may be amended, varied or added to from time to time by Workflow;
- 1.1.10 **"Transaction"** means any interaction by the User with the System including but not limited to logging onto the System using its User Name and Password and/or responding to correspondence from Workflow or its representatives;
- 1.1.11 **"User"** means the person who accesses or uses the Services, including the CMS Subscriber and all persons who it has authorised to gain access to the System;
- 1.1.12 **"User Account"** means the virtual account to be opened for the User which will be accessed by the User using its User Name and Password;
- 1.1.13 **"User Data"** means all information and other documents uploaded by the CMS Subscriber or any other authorised User onto the CMS or the Platforms;
- 1.1.14 **"User Name and Password"** means the user name allocated by Workflow to the User and the corresponding password provided to and/or created by the User;
- 1.1.15 **"Website"** means <https://www.workflow.tv>; and
- 1.1.16 **"Workflow/us/our"** means TV Workflow (Pty) Ltd.

**2 INTRODUCTION**

- 2.1 Workflow owns the System, a proprietary content management system for production companies.
- 2.2 The CMS Subscriber has subscribed for the Services and Workflow intends to make the Services available to Users for the Subscription Period, subject to these Terms.

**3 ACCEPTANCE OF THESE TERMS**

- 3.1 The User unconditionally and irrevocably agrees, for as long as it accesses and/or makes use of the Services, to be bound by and comply with these Terms.
- 3.2 Any changes to these Terms will be communicated to the User via e-mail, sms or updated on the Platforms. By continuing to use the System and/or the Services after such changes, the User unconditionally and irrevocably agrees to be bound by the Terms, as amended.
- 3.3 As Workflow is required by law to communicate changes and updates to the Terms to the User, any communication in this regard will not be subject to any opt out clause the User may have communicated to Workflow or any third party.
- 3.4 The User shall ensure that its personal details (including contact details) are kept up to date.

**4 THE USER'S OBLIGATIONS**

- 4.1 The User shall at all relevant times –
- 4.1.1 ensure that the User Data provided by it to the CMS Subscriber and to Workflow and/or uploaded by it onto the Platforms is up-to-date, accurate, reliable and valid in accordance with applicable laws;
- 4.1.2 be responsible for checking that the User Data has been successfully uploaded and is stored in the relevant location;
- 4.1.3 continuously update the User Data to make sure that it is correct and reliable;
- 4.1.4 not disclose its User Name and/or Password to any third party;
- 4.1.5 not use the System or the Services in any manner which violates these Terms or any applicable laws; and
- 4.1.6 comply with all reasonable requests of Workflow in relation to its use of the Platforms.
- 4.2 In addition, it is the CMS Subscriber's obligation to –
- 4.2.1 maintain all necessary back-ups of the User Data; and
- 4.2.2 delete all User Data which it does not wish to be made available to other Users via the System.

**5 SUSPENSION, RESTRICTION AND TERMINATION OF THE SERVICES**

- 5.1 Workflow reserves the right at any time to suspend or terminate the Services (or any part thereof) with or without notice if:
- 5.1.1 the Subscription Period terminates or expires in accordance with its terms;
- 5.1.2 the CMS Subscriber fails to punctually pay any fees or other amounts owing to Workflow or otherwise breaches the terms of its Subscription Agreement;
- 5.1.3 the User has violated any of these Terms;

- 5.1.4 Workflow, in its sole discretion, believes that the User has misused the Services or has violated any applicable laws in connection with the use of the Services; and/or
- 5.1.5 Workflow believes it is necessary to prevent loss or damage to it or the User and/or to prevent corruption or loss of User Data.
- 5.2 In addition, the CMS Subscriber and Workflow, at the request of the CMS Subscriber, may terminate the Services to any User without notice by deactivating such User's User Name and Password.
- 5.3 In addition, Workflow reserves the right to temporarily suspend the Services for any maintenance or repair work or for any other reason that requires the temporary suspension of the functionalities of the System.
- 5.4 The User agrees that Workflow shall not be liable to the User or to any third party for any modification, suspension or termination of the Services in terms of this clause 5.

## 6 PAYMENT TERMS

- 6.1 The CMS Subscriber is responsible for payment of the subscription fees via the payment methods stipulated in its Subscription Agreement with Workflow.
- 6.2 The CMS Subscriber is responsible for the timely payment of its subscription fees and other amounts owing to Workflow in accordance with its Subscription Agreement.
- 6.3 Workflow uses a third-party payment processor (the "Payment Processor") to process payments made through the Platforms. The processing of these payments will be subject to the terms, conditions and privacy policies of the payment processor. Workflow is not responsible for and gives no warranties or makes any representations in respect of the privacy policies or practices of linked or any third party or advertised web sites, including but not limited to its payment processor.

## 7 PRIVACY AND PROTECTION

- 7.1 The User Data provided to Workflow by the User in connection with these Terms shall remain the property of the CMS Subscriber.
- 7.2 All User Data uploaded by the CMS Subscriber and every other authorised User, including but not limited to scripts and information concerning other Users, may constitute confidential and/or proprietary information ("**Confidential Information**") and accordingly the User who receives such Confidential Information ("**Recipient**") agrees and undertakes –
  - 7.2.1 to treat and safeguard the Confidential Information as strictly private, secret and confidential;
  - 7.2.2 not to use or permit the use of the Confidential Information for any purpose other than as required by it to make use of the System and the Services and for the purpose of complying with the CMS Subscriber's instructions;
  - 7.2.3 except as permitted by the CMS Subscriber, not to disclose or divulge, directly or indirectly, the Confidential Information in any manner to any third party for any reason or purpose whatsoever without the prior written consent of the CMS Subscriber, which consent may be granted or withheld in the sole and absolute discretion of

- the CMS Subscriber;
- 7.2.4 to restrict the dissemination of the Confidential Information only to the CMS Subscriber and those Users who have been authorised by the CMS Subscriber to make use of the System and Services and then only on a "need to know" basis; and
- 7.2.5 to keep all Confidential Information safely and securely and to take all such steps as may be reasonably necessary to protect it against theft, damage, loss, unauthorised access (including access by electronic means) and to prevent Confidential Information from falling into the hands of unauthorised third parties.
- 7.3 The Recipient shall, at its own expense, within 10 (ten) days from written demand by us or the CMS Subscriber –
  - 7.3.1 return or destroy (as stipulated by us or the CMS Subscriber), and procure the return or destruction of all Confidential Information and all copies of it (whether in paper, electronic or other format) held by it without keeping any copies or partial copies thereof unless authorised;
  - 7.3.2 destroy, and procure the destruction of all analyses, compilations, notes, studies, memoranda or other documents prepared by it which contain or otherwise reflect or are generated from the Confidential Information;
  - 7.3.3 delete or procure the deletion of all Confidential Information from any computer, word processor or other device in its possession or control; and
  - 7.3.4 confirm in writing to us and to the CMS Subscriber that it has complied with the provisions of clauses 7.3.1 to 7.3.3.
- 7.4 The Recipient shall not be required to return, destroy or delete Confidential Information to the extent that it is required to retain such Confidential Information by law or to satisfy the rules and regulations of a regulatory body to which it is subject. For the avoidance of doubt, the obligations of confidentiality contained in this clause will continue to apply to such retained Confidential Information.
- 7.5 The undertakings given by the Recipient under this clause 7 shall not apply to any information which –
  - 7.5.1 is or becomes generally available to the public other than by the negligence or default of the Recipient or by these provisions;
  - 7.5.2 the CMS Subscriber confirms in writing is disclosed on a non-confidential basis; or
  - 7.5.3 has lawfully become known by or come into the possession of the Recipient on a non-confidential basis from a source other than the CMS Subscriber, its affiliated companies or any of their representatives, provided that such knowledge or possession is evidenced by the written records of the Recipient existing at the date of disclosure,
 (the "**Exclusions**") provided that –
  - 7.5.4 the onus shall at all times rest on the Recipient to establish that such information falls within the Exclusions;
  - 7.5.5 information will not be deemed to be within the Exclusions merely because such information is embraced by more general information in the public domain or in the Recipient's possession; and
  - 7.5.6 any combination of features will not be deemed

- to be within the Exclusions merely because individual features are in the public domain or in the Recipient's possession, but only if the combination itself and its principle of operation are in the public domain or in the Recipient's possession.
- 7.6 Without prejudice to the other rights of the CMS Subscriber, in the event of any unauthorised disclosure or use of the Confidential Information which is or is reasonably likely to constitute a breach of any provision of this clause 7, the Recipient shall –
- 7.6.1 immediately notify us and the CMS Subscriber in writing and take such steps as we and/or the CMS Subscriber may reasonably require in order to remedy or mitigate the effects of such actual or threatened breach; and
- 7.6.2 use all reasonable commercial endeavours to assist us and the CMS Subscriber in recovering and preventing the use, dissemination, sale or other disposal of such Confidential Information.
- 7.7 The Recipient hereby indemnifies and holds us, all other Users and the CMS Subscriber (“**Indemnified Parties**”) harmless against any and all loss, action, expense, claim, harm or damages of whatsoever nature suffered or sustained by the Indemnified Parties pursuant to a breach or threatened breach by the Recipient of the provisions of this clause.
- 7.8 Workflow shall comply with its privacy policy found on the Platforms in relation to such User Data.
- 7.9 Workflow shall in no way be responsible to the CMS Subscriber and/or to any other User for any User's breach of the provisions of this clause or for any loss or damage suffered by the CMS Subscriber, the Users or any other person arising from unauthorised disclosure or use of Confidential Information, whether through the Platforms or otherwise, except in so far as such unauthorised disclosure or use arose as a result of the gross negligence or wilful misconduct of Workflow.
- 7.10 Workflow shall be entitled, at its sole discretion and without liability to the User, to delete User Data uploaded during a Subscription Period after a period of 12 (twelve) months from expiry of the Subscription Period provided that –
- 7.10.1 in order to ensure top quality Services to the CMS Subscriber Workflow may keep User Data indefinitely, or until the CMS Subscriber specifically requests Workflow to delete such User Data, whichever occurs first;
- 7.10.2 If a User requests the CMS Subscriber to delete its Personal Information, Workflow shall be obligated to comply with POPI in relation to such requests.
- 7.11 In regard to any requests made in terms of clause 7.10.1, the provisions of clause 7.4 shall apply *mutatis mutandis* as between Workflow and the CMS Subscriber.

## 8 WORKFLOW'S INTELLECTUAL PROPERTY

- 8.1 Workflow owns or is licensed to use all intellectual property rights in and to the System, the Services and all materials, text, drawings and data entered into or uploaded by it onto the System (collectively the “**Intellectual Property**”).
- 8.2 Workflow grants the User a non-exclusive and non-transferable license to use the Intellectual Property for as long as Workflow provides the User with the Services and

the User shall be entitled to use such Intellectual Property solely in connection with such Services and for no other purpose.

- 8.3 Any unauthorised reproduction, distribution, derivative creation, sale, broadcast or other circulation or exploitation of the whole or any part of the Intellectual Property by the User shall constitute an infringement of Workflow's rights in and to such Intellectual Property.
- 8.4 Workflow owns or is licensed to use the Workflow trademarks, names, logos and service marks (collectively “**Trademarks**”) displayed on the Platforms whether registered or unregistered. The User must obtain Workflow's written permission to use any Trademarks. The User may not –
- 8.4.1 use any robot, spider, scraper, deep link or other similar automated data gathering or extraction tools, program, algorithm or methodology for any unlawful purpose, including the unlawful access to, acquisition of, control over, copying or monitoring of the Workflow System and/or Platform; or
- 8.4.2 attempt to decipher, decompile, disassemble or reverse-engineer any of the software comprising the System or the Services.

## 9 WARRANTIES

- 9.1 The User warrants to Workflow that –
- 9.1.1 the User is legally entitled to access and use the Services and to be bound by these Terms;
- 9.1.2 the User Data it uploads does not copy the work of any third party or otherwise infringe any third party intellectual property rights and the uploading of such User Data does not and will not violate applicable laws or the rights of any third party;
- 9.1.3 all User Data is up-to-date, accurate and truthful and the User has the right to upload such information to the System and/or the Platforms;
- 9.1.4 the User has, and will continue to have all necessary consents to use the Services; and
- 9.1.5 the User is and will remain in compliance with all applicable laws in relation to the use of the Services;
- 9.2 Although Workflow will always try to ensure that the functionality of the Services are available, the Services are provided “as is”. Subject to the Consumer Protection Act 68 of 2008 as read with any of its Regulations (collectively “the CPA”), Workflow makes no warranties, representations, statements or guarantees (whether express, implied in law or residual) in this regard. Subject to the CPA, Workflow does not warrant that the Services will -
- 9.2.1 meet the User's requirements or expectations;
- 9.2.2 be uninterrupted, timely, secure or error free;
- 9.2.3 meet any particular measure of accuracy, completeness or reliability, performance or quality; or
- 9.2.4 be free of viruses or any other data or code which has the ability to corrupt or adversely affect the operation of the User's computer, data or network.

## 10 LIMITATION OF LIABILITY

- 10.1 Workflow shall under no circumstances whatsoever be

liable for any direct or indirect loss or damage resulting from *inter alia*:

- 10.1.1 Workflow's, any User's or any other person's use of or reliance on the User Data;
  - 10.1.2 the unauthorised use of the Services by any third party;
  - 10.1.3 inadvertent damage, corruption or loss of the User Data, provided always that Workflow shall take reasonable steps to mitigate such damage, corruption or loss. It remains the User's responsibility to maintain appropriate alternate backups of the User's Data;
  - 10.1.4 telecommunication, electricity, internet or server downtime or failure; or
  - 10.1.5 the User failing to adhere to any of these Terms.
- 10.2 Notwithstanding anything to the contrary contained herein, Workflow shall not be liable for:
- 10.2.1 any special or indirect damages whether within the contemplation of the parties to this Agreement or not; and/or
  - 10.2.2 loss of income or profit, howsoever arising.
- 10.3 Workflow's aggregate liability to the CMS Subscriber and the Users, collectively, from whatsoever cause arising shall not exceed the subscription fees paid by the CMS Subscriber for the 3 (three) month period preceding the date of the incident which caused the loss or damage.

## 11 INDEMNITY

- 11.1 User indemnifies Workflow, its affiliates and subcontractors against any third party claims, damages or costs (including reasonable attorney's fees) caused by or attributable to the User's -
- 11.1.1 acts or omissions;
  - 11.1.2 use of the Services; or
  - 11.1.3 breach of these Terms.

## 12 FORCE MAJEURE

Workflow shall not be deemed in default or otherwise liable for any delay in or failure to provide the Services by reason of any act of God, fire, natural disaster, accident, act of government, shortage of materials or supplies, failure of transportation, internet or communication facilities or any other cause to the extent it is beyond the reasonable control of Workflow.

## 13 GENERAL

- 13.1 Workflow may assume that all electronic communications and uploads which reasonably appears to originate from a User are in fact from the User and that the User was authorised to upload the same.
- 13.2 Workflow may send alerts, notifications and other communications to the User by way of SMS, email or other electronic delivery mechanisms and the User consents to receive communications from Workflow in any such manner.
- 13.3 Workflow may send electronic alerts to the cellular number or email address which the User has provided to Workflow.
- 13.4 A certificate signed by any one of our directors of Workflow will, unless the contrary is proven, be sufficient evidence of –
- 13.4.1 the date of publication and the content of the Terms and any amended Terms;
  - 13.4.2 the date of publication and the content of earlier

versions of the Terms; and  
13.4.3 the date and content of any communication and notifications sent in terms of the Terms.

- 13.5 The User's obligations under these Terms may not be assigned. Workflow may however cede and assign its rights under these Terms.
- 13.6 Workflow does not waive its rights by delaying or failing to exercise them at any time.
- 13.7 If any provision of these Terms shall be determined to be invalid or unenforceable under any rule, law, or regulation of any governmental agency the validity or enforceability of any other provision of these Terms shall not be affected. These Terms will be governed by the laws of the Republic of South Africa.
- 13.8 No class action, or other representative action, joinder or consolidation of any claim with a claim of another person or class of claimants will be allowed.