

ZIFLOW TERMS OF SERVICE

By clicking 'agree' or signing the order (as applicable) you agree to be bound by these Terms of Service and you confirm that you have the necessary authority to agree to these Terms of Service on behalf of Customer. A Contract is created between Customer and Ziflow Limited, which comprise the order and these Terms of Service..

1. SOFTWARE SERVICE

- a) These Terms of Service permit Customer to access and use a web based software service as specified in the order and as further outlined at: <http://www.ziflow.com/service-support-levels> (**Service**). If specified in the order, deployment services (**Deployment Services**) may also be performed by Ziflow under these Terms of Service. All capitalised terms used in these Terms of Service have the meanings set out in section 13.

2. USE OF SERVICE

- a) **Customer Content.** All Customer Content remains the property of Customer, as between Ziflow and Customer. Customer grants Ziflow the right to use the Customer Content solely for purposes of performing its obligations under the Contract. During the term of Contract Customer may export the original uploaded files, Customer data provided via the reporting feature of the Service and metadata related to Customer Content, as allowed by functionality within the Service. More information on this is located at this **FAQ** <http://www.ziflow.com/purchasing-licensing-faqs>.
- b) **Users.** Customer may allow Users to access the Service under these Terms of Service. Such access must be for the sole benefit of Customer. Customer is responsible for the Users' compliance with these Terms of Service.
- c) **Customer responsibilities.** Customer (i) must keep the passwords secure and confidential; (ii) is solely responsible for Customer Content and all activity in its account; (iii) must use commercially reasonable efforts to prevent unauthorised access to its account, and notify Ziflow promptly of any such unauthorised access; and (iv) may use the Service only in accordance with the Service's online technical resources and applicable law.
- d) **Ziflow support.** Ziflow will provide customer support for the Service under the terms of Ziflow's Customer Support Policy which is located at <http://www.ziflow.com/service-support-levels>.
- e) **Free trial.** If Customer registers for a trial, Customer may access the Service free of charge for 14 days. The Service is provided 'as is' with no warranty during the trial. All Customer data will be deleted at the end of the trial unless Customer purchases the Service.

3. WARRANTY

- a) **Service warranty.** Ziflow will use commercially reasonable efforts to make the Service available in accordance with the Support & Service Levels located at <http://www.ziflow.com/service-support-levels>, subject to: (a) planned downtime (for which Ziflow will give at least 8 hours' notice and which Ziflow will schedule to the extent reasonably practicable during weekends; (b) any unavailability caused by circumstances beyond Ziflow's reasonable control, including acts of God, acts of government, lightning, flood, exceptionally severe weather, fire, earthquakes, explosions, war, civil unrest, acts of terror, acts or omissions of local or central government or other competent authorities; and computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within Ziflow's possession or reasonable control, and denial of service attacks; or (c) legal or regulatory restrictions imposed on Ziflow which prevent Ziflow from providing the Service, provided that if

any such restrictions are imposed on Ziflow, Ziflow will give Customer notice of such restriction as soon as reasonably practicable and to the extent that it is legally entitled to do so.

- b) **Deployment Services warranty.** Ziflow warrants that for a period of 30 days from delivery, it has performed the Deployment Services in conformance with generally accepted practices within the software services industry. Customer must notify Ziflow of any breach of this warranty no later than 30 days after delivery of the Deployment Services. Customer's exclusive remedy and Ziflow's entire liability under this warranty will be for Ziflow to re-perform any non-conforming portion of the Deployment Services, or if Ziflow cannot remedy the breach, then to refund that part of the fees attributable to such non-conforming portion of the Deployment Services. This warranty will not apply to the extent that Customer, its contractors or agents have modified any item.
- c) **General warranty.** Ziflow warrants to Customer for the term of the Contract that: (i) the functionality or features of the Service may change but will not materially decrease; and (ii) the customer support for the Service may change but will not materially degrade. While Ziflow takes reasonable physical, technical and administrative measures to secure the Service, Ziflow does not warrant or represent that the Service cannot be compromised. Customer understands that the Service may not be error free and that use may be interrupted.
- d) **Disclaimer.** Except as expressly set out in these Terms of Service Ziflow disclaims all representations, warranties and conditions of any kind whether express or implied by statute (including any implied warranty as to quality or merchantability, accuracy and fitness for a particular purpose), common law or otherwise to the maximum extent permitted at law.

4. PAYMENT.

- a) Customer is responsible for payment of all fees specified in the order. Payment must be made within seven (7) days from the date of an invoice. The fees are exclusive of sales, use, withholding, VAT and other similar taxes, and Customer is responsible for payment of such taxes at the rate and in the manner for the time being prescribed by law. If any withholding type tax is levied on a payment to Ziflow, then Customer must increase the amount paid to Ziflow so that the amount received after the withholding tax is deducted is the full amount Ziflow would have received if no withholding deduction had been made.

5. SECURITY AND DATA PROTECTION

- a) **Security.** Ziflow will have in place appropriate technical and organisational measures to protect Customer Content against accidental or unlawful destruction or accidental loss or alteration or unauthorised disclosure or access and against all other unlawful forms of processing.
- b) **Personal Data.** In relation to Personal Data, the parties acknowledge that Customer acts as the data controller, and Ziflow will, to the extent that it processes such Personal Data on Customer's behalf: (i) only process Personal Data in accordance with Customer's written instructions and to the extent reasonably necessary for Ziflow to comply with its obligations and to receive the benefit of its rights under the Contract; (ii) promptly refer to Customer any request, notices or other communications in respect of Personal Data, and which have been received from data subjects, any applicable data protection authority or any other law enforcement authority; and (iii) provide at Customer's expense such reasonable assistance and information to Customer as it may reasonably require to allow Customer to comply with its obligations as data controller under the Data Protection Act 1998.
- c) **Processing outside the EEA.** In the provision of the Service Ziflow may transfer Personal Data to its subcontractors and agents in countries outside the European Economic Area (EEA) which may not have laws comparable to those in the EEA for the protection of personal data. Ziflow will

ensure that the Personal Data continues to be adequately protected throughout any such transfer.

6. MUTUAL CONFIDENTIALITY

- a) **Confidential Information.** Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**), and this term includes all Customer Content. Ziflow's Confidential Information includes the non-public user interface design and layout of the Ziflow application and Customer specific pricing information.
- b) **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of the Contract. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with the Contract and provided that Discloser has in place an agreement with confidentiality obligations no less protective than those in this section 6.
- c) **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but must (to the extent it is permitted to do so) provide Discloser with advance notice to seek a protective order.

7. TERM AND TERMINATION

- a) **Term.** The term of the Contract will start on the date on which Ziflow accepts Customer's order. Unless terminated earlier in accordance with this section 7 or otherwise, the Contract will continue for the Term specified in the order. Thereafter, the Contract will automatically renew for additional terms of the same length unless either party provides written (including electronic) notice of non-renewal to the other party at least 30 days prior to the date of renewal.
- b) **Mutual termination for material breach.** If either party is in material breach of the Contract, the other party may terminate the Contract at the end of a written 30-day notice/cure period, if the breach has not been cured.
- c) **Return of Customer content.** Customer may extract the Customer Content at the end of the Contract in accordance with the transition assistance policy located at <http://www.ziflow.com/transition-assistance-policy.html>. At the end of the transition period Customer may no longer access the Customer Content via the Service and Ziflow may destroy any Customer Content remaining on the Service.
- d) **Return of Ziflow property upon termination.** Customer must destroy or return all property of Ziflow. Upon Ziflow's request, Customer will confirm in writing its compliance with this requirement. If the Contract is terminated in accordance with section 7(b): (i) by Customer, then

Ziflow will refund to Customer any prepaid fees covering the remainder of the term after the date of termination; and (ii) by Ziflow, then Customer must pay any unpaid fees.

- e) **Accrued rights.** The expiry or termination for any reason of the Contract will not prejudice or affect the accrued rights, remedies, obligations or liabilities of the parties existing at the date of termination.
- f) **Suspension of the Service.** Ziflow may temporarily suspend the access of Customer or any of the Users to the Service or remove the applicable Customer Content, or both, if Ziflow believes in good faith that the security, performance or integrity of the Service is at serious risk or there is a violation of applicable law. Ziflow will exercise this right to the minimal extent reasonably necessary based on the perceived threat to the Service.

8. ZIFLOW PROPERTY

- a) **Reservation of rights.** The software, workflow processes, user interface, designs and other technologies provided by Ziflow as part of the Service are the proprietary property of Ziflow and its licensors. All right, title and interest in and to such items, including all associated intellectual property rights, remain with Ziflow. Customer must not remove or modify any proprietary marking or restrictive legends as part of the Service. Ziflow reserves all rights unless expressly granted under these Terms of Service.
- b) **Restrictions.** Customer must not
 - i. sell, resell, rent or lease the Service or use it in a service provider capacity;
 - ii. use the Service to store or transmit unsolicited marketing emails, infringing, libelous or otherwise objectionable, unlawful or tortious material, or material which violates third party rights;
 - iii. interfere with or disrupt the integrity or performance of the Service;
 - iv. attempt to gain unauthorised access to the Service or related systems or networks;
 - v. reverse engineer the Service except to the extent permitted by law despite this limitation; or
 - vi. access the Service to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.
- c) **Aggregate data.** During and after the term of the Contract, Ziflow may use non-personally identifiable data within the Service for purposes of enhancing the Service, aggregated statistical analysis, technical support and other business purposes.

9. LIABILITY LIMIT

- a) **No exclusion or limitation of liability.** Nothing in the Contract excludes or limits the liability of either party for: (i) death or personal injury caused by its negligence; (ii) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or (iii) fraud or fraudulent misrepresentation.
- b) **Maximum aggregate liability.** Subject to section 9(a), the maximum aggregate liability of each party arising under or in connection with the Contract in respect of the year in which the liability arises, whether arising from tort (including negligence), breach of contract, statutory duty or otherwise, must in no event exceed the aggregate amount of the fees paid and payable by Customer to Ziflow under the Contract during the 12 months immediately prior to the date on which the cause of action first arose.
- c) **No liability.** Subject to section 9(a), neither party will be liable for any loss of profits, income, anticipated cost savings, business, reputation or goodwill, loss of data, opportunity or any type of

indirect of consequential loss, even if such loss was reasonably foreseeable or such party has been advised of the possibility of incurring such loss.

10. INDEMNITY

- a) **Defence of third party claims.** Ziflow will defend or settle any third party claim against Customer to the extent that such claim alleges that Ziflow technology used to provide the Service violates a copyright, patent, trademark or other intellectual property right, provided that Customer promptly notifies Ziflow of the claim in writing, cooperates with Ziflow in the defence, and allows Ziflow sole control of the defence or settlement of the claim. Costs. Ziflow will pay infringement claim defence costs incurred as part of its obligations above, and Ziflow negotiated settlement amounts, and court awarded damages. Process. If such a claim appears likely, then Ziflow may modify the Service, procure the necessary rights, or replace it with the functional equivalent. If Ziflow determines that none of these are reasonably available, then Ziflow may terminate the Service and refund any prepaid and unused fees. Exclusions. Ziflow has no obligation for any claim arising from: (i) a combination of the Service with other technology, data or processes where the infringement would not occur but for the combination; (ii) use of Customer Content; or (iii) technology, data, processes or services not provided by Ziflow. This section contains Customer's exclusive remedies and Ziflow's sole liability for intellectual property infringement claims.
- b) By Customer. If a third party makes a claim against Ziflow or any of its Affiliates that any part of the Customer Content infringes or violates that party's copyright, patent, trademark or other intellectual property right, Customer will defend Ziflow against that claim at Customer's expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by Customer, provided that Ziflow promptly notifies Customer of the claim in writing, cooperates with Customer in the defence, and allows Customer sole control of the defence or settlement of the claim.

11. GOVERNING LAW

- a) The Contract is governed by the law of England and Wales. The parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales regarding any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims). Nothing in the Contract prevents or limits either party's ability to seek equitable relief (including injunctive relief) in any court of competent jurisdiction. The UN Convention on Contracts for the International Sale of Goods does not apply.

12. OTHER TERMS

- a) **Changes to these Terms of Service.** Ziflow reserves the right to make changes to these Terms of Service at any time by posting a revised version on the website. Customer's continued use of the Service indicates Customer's acceptance of such changes. Customer is advised to check the Terms of Service from time to time for any changes that may affect it. Ziflow last modified these Terms of Service on the date stated at the beginning of these Terms of Service.
- b) Entire agreement. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, contracts, arrangements, communications and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that it has not relied on any oral or written representation (whether made negligently or innocently) other than as expressly set out in the Contract. Neither party will have any claim for innocent or negligent misrepresentation based upon any statement made prior to

the date of the Contract and not contained within the Contract. Nothing in this section 12(b) will limit or exclude any liability for fraud.

- c) Waiver. No waiver is effective unless the party waiving the right signs a waiver in writing.
- d) No assignment. Neither party may assign or transfer the Contract to a third party, except that the Contract may be assigned, without the consent of the other party, as part of a merger, or sale of substantially all the assets, of a party.
- e) Independent contractors. The parties are independent contractors with respect to each other.
- f) No third party rights. No third party will have any rights under, or be able to enforce, the Contract.
- g) Enforceability. If any term of the Contract is invalid or unenforceable, the other terms remain in effect.
- h) Force Majeure. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including force majeure events.
- i) Key Customer. Ziflow may refer to Customer as a key customer and Ziflow may use Customer's name and logo on the Ziflow website and in other marketing materials, unless Customer notifies Ziflow in writing otherwise.
- j) Money damages insufficient. Any breach by a party of the Contract or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- k) No additional terms. Ziflow rejects additional or conflicting terms of any Customer form-purchasing document.
- l) Survival of terms. Any terms that by their nature survive termination of the Contract for a party to assert its rights and receive the protections of the Contract, will survive.
- m) Feedback. By submitting ideas, suggestions or feedback to Ziflow regarding the Service, Customer agrees that such items submitted do not contain confidential or proprietary information;

and Customer hereby grants Ziflow an irrevocable, unlimited, royalty-free and fully-paid perpetual license to use such items for any business purpose.

13. DEFINITIONS

- a) In these Terms of Service the following terms have the following meanings:
- b) **Affiliate** means any entity which directly or indirectly controls, is controlled by, or is under common control with Ziflow; and for these purposes 'control' means direct or indirect ownership or control of more than 50% of the voting interests of the party;
- c) **Contract** means the contract created between Customer and Ziflow on the date on which Ziflow accepts Customer's order and such Contract comprises the order and these Terms of Service;
- d) **Customer Content** means electronic files, logos, data and information uploaded under Customer's account to the Service, whether directly or through the API (i.e. the programming interface to the Service);
- e) **Personal Data** means the personal data of Customer or the personal data generated or otherwise processed on behalf of Customer by Ziflow in the performance of its obligations;
- f) **User** means an individual authorised by Customer to use the Service, and such term may include employees, consultants, contractors, clients and agents, and third parties with which Customer transacts business.
- g) The following expressions will be construed as follows: the terms "**data controller**", "**personal data**", "**process**" and "**processing**" have the meaning given to those terms in the Data Protection Act 1998; and any phrase introduced by the term "**including**" will be construed as illustrative and will not limit the sense of the words proceeding such term.
- h) Any reference to any statute or statutory provision including any subordinate legislation includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.