

## SERVICE TERMS AND CONDITIONS

### (these "Service Terms and Conditions")

#### 1. Definitions

In this Agreement:

##### 1.1. the following terms shall have the following meanings unless the context otherwise requires:

**"Account"**: the account allocated to you by us for you to access information and functionality relating to the Service (including listing of security roles for Users to fill) and related services on the Website;

**"Agreed Purposes"**: means our provision to you of access to the Service;

**"Agreement"**: these Service Terms and Conditions together with the relevant Registration Document and any document referred to in these Service Terms and Conditions or the Registration Document, save for the Contract and the Client Terms;

**"Assignment"**: the use of the User's services by you or (where applicable) any third party following entry into a contract for such assignment;

**"Authorised Employees"**: those allocated employees of the Client who will have access to your Account and who will be able to receive notifications regarding particular Roles;

**"Breach of Duty"**: the breach of any: (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract; or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty);

**"Broadstone", "we", "us" or "our"**: Broadstone Employment Services Limited, incorporated and registered in England and Wales with company number 11790747 whose registered office is at Neo Building, 9 Charlotte Street, Manchester, Greater Manchester, England, M1 4ET;

**"Broadstone Group"**: means any company which is a subsidiary or holding company of Broadstone, as defined by section 1159 of the Companies Act 2006;

**"Business Day"**: any day other than: (i) a Saturday, (ii) a Sunday or (iii) any day when the clearing banks in the City of London are not physically open for business;

**"Client", "you" or "your"**: the party who is granted access to the Service by us under this Agreement, whose details may be as set out in the Registration Document;

**"Client Terms"**: the terms, on the basis of which we enter into a contract with you for your use of a User's services;

**"Confidential Information"**: any information in any form or medium obtained by or on behalf of one Party from or on behalf of the other Party in relation to this Agreement which is expressly marked as confidential or which a reasonable person would reasonably consider to be confidential, whether disclosed or obtained before, on or after the date of this Agreement, together with any reproductions of such information or any part of such information;

**"Contract"**: a contract entered into between you and us on the basis of the **Client Terms** in respect of the Assignments;

**"Content"**: any information you provide to us to list on the Service relating to Roles and your Profile;

**"Controller"**: has the meaning given to it by the Data Protection Act 2018;

**"Data Protection Legislation"**: in relation to any personal data which is processed in the performance of this Agreement, the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679 ("**GDPR**"), in each case together with any national implementing laws, regulations, secondary legislation and any other applicable or equivalent data protection or privacy laws, as amended or updated from time to time, in the UK, and any successor legislation to such laws;

**"Data Subject"**: has the meaning set out in the Data Protection Act 2018;

**"Extended Term"**: has the meaning given to it in Clause 3;

**"Event of Force Majeure"** has the meaning given to it in Clause 14.1;

**"Initial Term"**: has the meaning given to it in Clause 3;

**"Intellectual Property Rights"**: all intellectual and industrial property rights of any nature anywhere in the world, including copyright, database rights, design rights, topography rights, registered designs, design rights, trade mark rights, service mark rights, domain name rights, patents, rights to inventions, trade secrets, rights in know-how, and any other rights of a similar nature, whether or not any of the same are capable of protection by registration and whether registered or not, and applications for registration of any of the foregoing and the right to apply for any of them, anywhere in the world;

**"Liability"**: liability in or for breach of contract, Breach of Duty, torts (including negligence and intentional torts), deliberate breach (including deliberate personal repudiatory breach), misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and, for the purposes of this definition, all references to "**this Agreement**" shall be deemed to include any collateral contract);

**"Party"**: either us or you, and "**Parties**" shall mean both of us and you;

**"Permitted Recipients"**: means the Parties, the employees of each Party and any third parties engaged to perform obligations in connection with this Agreement;

**"Personal Data"**: has the meaning given to it by the Data Protection Act 2018;

**"Processing"**: has the meaning as set out in the Data Protection Act 2018 and **"Process"** shall be interpreted accordingly;

**"Processor"**: has the meaning given to it by the Data Protection Act 2018;

**"Profile"**: the profile page we will create for you on the Service where you can showcase information about your business to a User, and list information about Roles;

**"Registration Acceptance"**: the email to you from us accepting the Registration Document;

**"Registration Document"**: the written document you provide to us containing the specific information relating to the particular services to be supplied by us to you;

**"Roles"**: the roles which are to be listed by you for a fixed period of time in the security sector;

**"Service"**: the service provided by us of:

- i. listing Roles on the User App;
- ii. giving you the ability to enter into Assignments;
- iii. approving Timesheets submitted by Users in relation to Assignments;
- iv. providing a live chat function enabling you to communicate with Users directly if applicable; and
- v. providing access to User Profiles;

**"Timesheets"**: the form required to record the number of hours worked by a User during an Assignment;

**"User App"**: the mobile application software developed and created by us, to be used by users to view job roles and related services which are listed as available by security businesses that have subscribed with us to make such services available through that mobile application software;

**"User Data"**: has the meaning given to it in Clause 12.1;

**"User Profile"**: the profile page created by the User which we contain certain information regarding the User and which, subject to certain conditions, we may can make accessible for you to view; and

**"User"**: an individual that downloads the User App, by which that individual is able to view job roles from Companies that have subscribed with us to make such services available through the User App;

**"Website"**: our website hosted at [INSERT] where you will be able to access the Service;

- 1.2. references to "Clauses" are to clauses of these Terms and Conditions;
- 1.3. the headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement;
- 1.4. a **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.5. a reference to a Party includes its personal representatives, successors or permitted assigns;
- 1.6. words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral and references to persons shall include an individual, company, corporation, firm, partnership, trust, association, government or local authority department or other authority or body (whether corporate or unincorporated);
- 1.7. a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.8. any phrase introduced by the terms **"including"**, **"include"**, **"in particular"** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding or following those terms; and
- 1.9. a reference to **"writing"** or **"written"** includes in electronic form and similar means of communication (except under Clause 15).

## **2. Agreement**

- 2.1. The terms of this Agreement apply to the exclusion of any terms and conditions submitted, proposed or stipulated by you in whatever form and at whatever time. This Agreement applies to the Service.
- 2.2. Save as expressly provided in this Agreement, this Agreement shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties preceding the date of this Agreement and in any way relating to the subject matter of this Agreement and to the exclusion of any representations not expressly stated in this Agreement except for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each of the Parties acknowledges that it has not entered into this Agreement based on any representation that is not expressly incorporated into this Agreement.
- 2.3. This Agreement constitutes the whole agreement and understanding of the Parties as to the subject matter of this Agreement and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to in this Agreement.
- 2.4. Any Registration Document provided by you to us must be in the form we require from time to time. This Agreement shall be legally formed and the Parties shall be legally bound when we have received a Registration Document that has been submitted by you to us. Submission by you to us of a Registration

Document shall be deemed to be an offer by you to be granted access to the Service, subject to the provisions of this Agreement, and the sending of the Registration Acceptance by us to you shall be considered as our acceptance of such offer.

- 2.5. If you provide to us a purchase order for use of the Service, that order (and any terms and conditions attached or referred to in it) shall be purely for your administrative purposes and shall not form part of this Agreement.
- 2.6. In the event of a conflict between these Service Terms and Conditions and the Registration Document, then the Registration Document shall prevail over these Service Terms and Conditions.

### **3. Term**

This Agreement shall commence on the date on which this Agreement is entered into under Clause 2.4 and, unless terminated earlier pursuant to the termination provisions of this Agreement, shall continue for one year ("**Initial Term**") and shall automatically extend for one year ("**Extended Term**") at the end of the Initial Term and at the end of each Extended Term.

### **4. The Service**

- 4.1. We shall:
  - 4.1.1. make available the Service to you; and
  - 4.1.2. list the Roles on the Service using the information and Content provided to us by you, and we shall list such Content in a way that we, at our absolute discretion consider appropriate.
- 4.2. We warrant that:
  - 4.2.1. we shall use our reasonable skill and care in providing the Service;
  - 4.2.2. we have all necessary rights, permissions and consents to enter into, and perform our obligations under, this Agreement; and
  - 4.2.3. we shall comply with all Applicable laws, statutes, regulations and bye-laws in relation to the exercise of our rights and performance of our obligations under this Agreement.
- 4.3. If, for any reason, we choose to ask you to approve the way in which we propose to list the Content on the Website, you shall not unreasonably withhold or delay such approval.
- 4.4. We shall make available the Service using information and criteria supplied by you. It is your responsibility to provide accurate and updated information.
- 4.5. We reserve the right and have absolute discretion, but not an obligation, to remove, screen or edit any Content that you provide to us to list on the Website that breaches this Agreement or is otherwise objectionable. Without prejudice to any other provision of this Agreement, we reserve the right to refuse to list Content or to immediately remove listed Content.
- 4.6. We may, at our absolute discretion, from time to time either host the Service on our own servers or use third party suppliers to do so in whole or in part. You acknowledge that we may from time to time without prior notice and without the need for prior agreement provide reasonable additional obligations or requirements or reasonably restrict your rights due to the requirements of the third party suppliers.
- 4.7. You acknowledge that we cannot guarantee uninterrupted, timely or error-free access to the Service due to events beyond our control (including operation of public and private networks by Internet service providers, telecoms providers and third parties), and we may also need to carry out maintenance (whether planned or unplanned, and routine or not) from time to time on the Service; however, we shall use our reasonable endeavours to minimise downtime of the Service. Subject to us having used such reasonable endeavours, we do not warrant that the provision of the Service to you will be uninterrupted or error-free.
- 4.8. We reserve the right at our absolute discretion to make changes to the Service at any time.
- 4.9. We do not warrant that the Service will meet your individual needs. Except for any matter upon which we specifically agree in writing with you to advise or do, we shall not be responsible or have any Liability (subject to Clause 10.2) for advising on, or failing to advise on, or doing, or failing to do, anything else.
- 4.10. We do not guarantee that a User will accept Roles available through the Website. Except as expressly stipulated in this Agreement, we shall not be responsible or have any Liability (subject to Clause 10.2) for providing or achieving any particular results or outcomes or within a particular time.
- 4.11. We retain the right to, if we consider it appropriate:
  - 4.11.1. immediately halt the posting of any Roles;
  - 4.11.2. prevent or restrict access to the Service; and/or
  - 4.11.3. take any other action to preserve and protect the marketplace and/or to restrict access to or availability of or remove any objectionable material, feedback, ratings, inaccurate listings, inappropriately categorised items, unlawful items or items prohibited for listing on the Website under this Agreement.
- 4.12. Except where expressly provided for within this Agreement, we exclude all conditions, warranties, terms and obligations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Service, the Website, the Account and our obligations under this Agreement.

### **5. Website and Account**

- 5.1. We shall allocate to you the Account for optimised use of the Service. The Account may also allow you to access information such as your Profile, and can be used to communicate with a User.
- 5.2. You may allocate an Authorised Employee access to the Account as set out in the Registration Document, details of which may be updated from time to time by providing written notice to us.
- 5.3. You may access the Account and the Website only with a browser that is compatible with the Service, including any security features that are part of the Service.
- 5.4. In order for us to allocate to you access to the Account, you shall provide such information as we may require from time to time.
- 5.5. Once you have been allocated access to the Account, you will be asked to create a username for, and allocate a password to, such access. You must keep the password confidential and immediately inform us if any unauthorised third party becomes aware of that password or if there is any unauthorised use of the Account or any breach of security known to you. You agree that any person to whom your username or password is disclosed is authorised to act as your agent for the purposes of using (and/or transacting via) the Service. You are entirely responsible if you do not maintain the confidentiality of your password.
- 5.6. Once you have access to your Account, you may update your Profile and Role details by accessing your Account through the Website.
- 5.7. You agree to notify us immediately of any changes which are relevant to your Account by informing us through the Website where possible or otherwise by telephoning us on [INSERT] or emailing us at [INSERT].
- 5.8. We reserve the right to prevent you using the Service.

## **6. Role Conditions**

### **Conditions for posting a Role**

- 6.1. When posting a Role, you must follow the instructions on the Website as to how to post a Role and for making changes to the Role before you submit it to appear on the Service.
- 6.2. When you post a Role on the Service, we shall send you a notification through the Website.
- 6.3. In order to post a Role on the Website, the following conditions shall apply:
  - 6.3.1. we do not accept businesses onto the Service whose role offers are not the real role being offered and the role is materially different to its description;
  - 6.3.2. we do not accept businesses onto the Service whose commercial activity revolves around sex, tarot, gambling, personal relationships or weapons;
  - 6.3.3. no duplicate Roles are accepted. It is considered that a Role is a duplicate when salary, location and position coincide;
  - 6.3.4. you cannot send links to a User to run on a different website, mobile application or any platform other than the Service. If this happens, we will close your Account; and
  - 6.3.5. Roles that discriminate by gender, race or disability, or which are otherwise illegal (whether due to the nature of the qualifications required for the role or otherwise) are not allowed and may lead to proceedings against you. If we consider that a Role may be discriminatory or illegal, we may, at our discretion, edit or delete the Role and you shall not be entitled to any refund of amounts paid or pending regarding the publication of such Role. We shall have no Liability (subject to Clause 10.2) to you or to any third party (including any User) for any damages resulting from our publication of any Role which is untrue, misleading, discriminatory, illegal or which in any other way breaches the requirements of this Agreement or any other terms and conditions applicable to the Services.

### **Response to Role offers**

- 6.4. A User may either apply for an Assignment, contact you directly via our live chat function, or accept an Assignment by selecting the appropriate button on the User App. You acknowledge that we do not guarantee any response to Roles posted on the Service, or that the answers given by the User are from people qualified for the position advertised.
- 6.5. You acknowledge that each Assignment is subject to the Contract, and you agree to comply with your obligations under the Contract.
- 6.6. In relation to any interview, selection or interaction with any User, you agree that you will not directly or indirectly discriminate against any User because of or for a reason related to sex, race, religion or belief, disability, age, maternity, gender reassignment, or sexual orientation.
- 6.7. You acknowledge that we shall have no Liability (subject to Clause 10.2), and you bear sole responsibility and Liability for the consequences of your use of the Service, the listing of Roles on the Website, any Assignment with a User, and any acceptance of a User for those Roles and your entering into any Assignment.
- 6.8. Without prejudice to any other right or remedy which we may have, if we reasonably believe that you have failed to comply in any way with, any of the terms of this Agreement, we may exercise any one or more of the following remedies at our absolute discretion, whether or not any of the Roles have been accepted by the User:
  - 6.8.1. rescind this Agreement (in whole or in part); and/or
  - 6.8.2. remove any Role from the Website; and/or

6.8.3. close your Account.

## **7. Your obligations**

- 7.1. You shall:
- 7.1.1. ensure that the terms of the Registration Document are complete and accurate;
  - 7.1.2. ensure that you fully co-operate with us, including in order to enable us to carry out fully, accurately and promptly our obligations under this Agreement to the best of our ability;
  - 7.1.3. provide to us in writing information about your business for your Profile, which shall be subject to our approval (such approval not to be unreasonably withheld or delayed) and shall be subject to this Agreement;
  - 7.1.4. not submit to us or to any User anything which in any respect may infringe the Intellectual Property Rights or privacy or other rights of us or any third party;
  - 7.1.5. promptly provide us with such information, data and assistance (including anything identified in the Registration Document for you to provide to us) that will enable us to carry out fully, accurately and promptly our obligations under this Agreement to the best of our ability, where such information, data and assistance shall, at all times;
  - 7.1.6. promptly comply with all of our reasonable requests under this Agreement;
  - 7.1.7. have all necessary rights, permissions and consents to enter into, and perform your obligations under, this Agreement; and
  - 7.1.8. comply with all Applicable laws, statutes, regulations and by-laws in relation to the exercise of your rights and performance of your obligations under this Agreement and in relation to any Assignment.
- 7.2. It is your responsibility to ensure that you provide us with the information required to enable us to properly provide the Services, including Content. We shall not be responsible or have any Liability (subject to Clause 10.2) for any failure to provide the Services to the extent caused by your failure to properly ensure the provision of the relevant information to us.
- 7.3. You shall ensure that all Content and other information, including any images, you provide to us is of at least the same quality, completeness and accuracy as the highest quality and most complete and accurate content and other information displayed or used by you on any media other than the Website.
- 7.4. You shall not in any way use the Website or the Service, or submit to us or the Website or the Service, or to any user of the Website or the Service, anything which in any respect:
- 7.4.1. is in breach of any law, statute, regulation or bylaw of any applicable jurisdiction;
  - 7.4.2. is fraudulent, criminal or unlawful;
  - 7.4.3. is inaccurate or out-of-date;
  - 7.4.4. is obscene, indecent, vulgar, discriminatory, offensive, threatening, defamatory or untrue;
  - 7.4.5. impersonates any other person or body or misrepresents a relationship with any person or body;
  - 7.4.6. may infringe or breach the copy or Intellectual Property Rights of any third party;
  - 7.4.7. may be contrary to our interests;
  - 7.4.8. is contrary to any specific rule or requirement that we may stipulate for the Service; or
  - 7.4.9. involves your use, delivery or transmission of any viruses, unsolicited communications, Trojan horses, trap doors, cancelbots, back doors, worms, easter eggs, time bombs or computer programming routines that are intended to damage, interfere with, surreptitiously intercept or expropriate any data, personal information or system.
- 7.5. You may not use any automated means to access your Account, the Website or the Service or collect any information from them unless we explicitly agree in writing to allow you to do so.
- 7.6. It is your responsibility to ensure that the Service is sufficient and suitable for your purposes and meets your individual requirements. It is your responsibility to ensure that:
- 7.6.1. you have sufficient capacity to enter into this Agreement; and
  - 7.6.2. your use of the Service and the making available of Roles through the Website is in your best interests;
- and you bear sole responsibility and Liability (subject to Clause 10.2) for the consequences of your use of the Service and the making available of Roles.
- 7.7. By providing to us information which we will display on the Website and User App:
- 7.7.1. you warrant to Users that:
    - (a) you are properly authorised to advertise the Roles; and
    - (b) unless we have agreed with you in advance and in writing to the contrary, you warrant to us that: you are a duly organised business, validly existing and in good standing under the laws of the state or country in which the business is registered.
- 7.8. You must maintain and update information and Content provided by you to us as applicable. You shall audit the information you provide to us that is listed on the Website on a regular basis (at least weekly) to ensure ongoing compliance with this Agreement.
- 7.9. You shall not impersonate any person or use a name that you are not legally authorised to use. If you provide false or incorrect information or do not notify us of changes to your information or Content immediately, we reserve the right to terminate this Agreement under Clause 11.4.1.
- 7.10. We shall not be responsible or have any Liability (subject to Clause 10.2) for:

7.10.1. information or Content provided to us by you that is in breach of any provision of this Agreement and that is subsequently posted on the Website or User App; or

7.10.2. the listing of any Roles on or through the Website or User App that is in breach of any provision of this Agreement or any Applicable law.

## **8. Intellectual Property Rights**

8.1. We and you acknowledge that, as between us and you, we and our licensors own all Intellectual Property Rights in the Account, the Website and the Service. We grant to you a limited non-transferable licence to make use of the Account, the Website and the Service in accordance with this Agreement. This licence expressly excludes, without limitation:

8.1.1. any resale or commercial use of the Website or the Service;

8.1.2. modifying, distributing, copying, republishing or making any derivative of the Website or the Service; and

8.1.3. the collection and use of participant email addresses or other User information or listings, or any data extraction or data mining whatsoever.

Any goodwill accruing out of the use of our and our affiliates Intellectual Property Rights under this Agreement shall vest in us and our affiliates, as the case may be.

8.2. You grant to us and our affiliates a non-exclusive, worldwide, royalty-free, perpetual, irrevocable licence to exercise all Intellectual Property Rights over the information and Content provided by you to us under this Agreement.

8.3. Subject to anything else to the contrary in this Agreement, neither Party shall have any rights over or to use the other Party's Intellectual Property Rights for any other purpose without the other Party's express prior written consent.

## **9. Confidentiality**

9.1. Each Party shall keep the other Party's Confidential Information confidential and shall not:

9.1.1. use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement; or

9.1.2. disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 9.

Each Party shall use adequate procedures and security measures to protect the other Party's Confidential Information from inadvertent disclosure or release to unauthorised persons.

9.2. A Party may disclose the other Party's Confidential Information to those of its employees, agents and subcontractors who need to know such Confidential Information provided that:

9.2.1. it informs such employees, agents and subcontractors of the confidential nature of the Confidential Information before disclosure; and

9.2.2. it does so subject to obligations equivalent to those set out in this Clause 9.

9.3. A Party may disclose the Confidential Information of the other Party to the extent such Confidential information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 9.3, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.

9.4. The obligations of confidentiality in this Clause 9 shall not extend to any matter which either Party can show:

9.4.1. is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Agreement; or

9.4.2. was independently developed by it; or

9.4.3. was independently disclosed to it by a third party entitled to disclose the same; or

9.4.4. was in its written records prior to receipt.

9.5. Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement are granted to the other Party, or to be implied from this Agreement.

9.6. We may identify you as a user of the Service, provided that, in doing so, we shall not reveal any of your Confidential Information (without your prior written consent).

9.7. On termination of this Agreement, each Party shall:

9.7.1. return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;

9.7.2. erase all the other Party's Confidential Information from its computer systems (to the extent possible); and

9.7.3. certify in writing to the other Party that it has complied with the requirements of this Clause 9.7, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this Clause 9 shall continue to apply to any such documents and materials retained by a recipient Party following termination of this Agreement for any reason.

9.8. The provisions of this Clause 9 shall continue to apply after termination of this Agreement.

## **10. Limitation of Liability**

10.1. This Clause 10 prevails over all of this Agreement and sets forth our entire Liability, and your sole and exclusive remedies, in respect of:

- 10.1.1. performance, non-performance, purported performance, delay in performance or mis-performance of this Agreement or any services in connection with this Agreement; or
- 10.1.2. otherwise in relation to this Agreement or entering into this Agreement.

10.2. Neither Party excludes or limits its Liability for:

- 10.2.1. its fraud; or
- 10.2.2. death or personal injury caused by its Breach of Duty; or
- 10.2.3. any breach of the obligations implied by Section 2 of the Supply of Goods and Services Act 1982; or
- 10.2.4. any other Liability which cannot be excluded or limited by Applicable law.

10.3. Subject to Clause 10.2, and other than any Liability arising pursuant to this Agreement, we do not accept, and we hereby exclude, any Liability for Breach of Duty.

10.4. Subject to Clause 10.2, we shall not have any Liability in respect of any:

- 10.4.1. indirect or consequential losses, damages, costs or expenses;
- 10.4.2. loss of actual or anticipated profits;
- 10.4.3. loss of contracts;
- 10.4.4. loss of use of money;
- 10.4.5. loss of anticipated savings;
- 10.4.6. loss of revenue;
- 10.4.7. loss of goodwill;
- 10.4.8. loss of reputation;
- 10.4.9. loss of business;
- 10.4.10. ex gratia payments;
- 10.4.11. loss of operation time;
- 10.4.12. loss of opportunity;
- 10.4.13. loss caused by the diminution in value of any asset; or
- 10.4.14. loss of, damage to, or corruption of, data;

whether or not such losses were reasonably foreseeable or we or our agents or contractors had been advised of the possibility of such losses being incurred. For the avoidance of doubt, Clauses 10.4.2 to 10.4.14 (inclusive) of this Clause 10.4 apply whether such losses are direct, indirect, consequential or otherwise.

10.5. Subject to Clause 10.2, our total aggregate Liability arising out of or in connection with all claims in aggregate (including warranty claims and losses relating to the breach of warranty) shall be limited to £1,000,000.

10.6. The limitation of Liability under Clause 10.5 has effect in relation both to any Liability expressly provided for under this Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of this Agreement.

10.7. You acknowledge and accept that we only make the Service available on the express condition that we will not be responsible, nor, subject to Clause 10.2, shall we have any Liability, directly or indirectly, for any act or omission of you, your affiliates or your or their employees, agents, contractors or customers or any third party.

## **11. Termination**

11.1. You may terminate this Agreement with immediate effect at any time by notifying us via your Account, or in such a manner as we may specify.

11.2. Without prejudice to any of our rights or remedies under this Agreement or at law, we may terminate this Agreement with immediate effect (or such other notice period as we see fit at our absolute direction) by giving notice to you if you fail to pay any amount due under this Agreement on the due date for payment and such amount remains in default not less than 14 days after being notified to make such payment.

11.3. We may terminate this Agreement immediately by notice in writing to you if we reasonably consider that our relationship with you may cause our brand or business to be brought into disrepute.

11.4. Each Party may terminate this Agreement immediately by notice in writing to the other Party if:

- 11.4.1. subject to Clause 11.1, the other Party is in material breach of any of its obligations under this Agreement, and, where such material breach is capable of remedy, the other Party fails to remedy such breach within a period of 10 Business Days of being notified of such breach by the Party;
- 11.4.2. the other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; and/or

- 11.4.3. the other Party gives notice to any of its creditors that it has suspended or is about to suspend payment or if it shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or an order is made or a resolution is passed for the winding-up of the other Party or an administration order is made or an administrator is appointed to manage the affairs, business and property of the other Party or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other Party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or administrator which entitle the court to make a winding-up or bankruptcy order or the other Party takes or suffers any similar or analogous action in consequence of debt in any jurisdiction.
- 11.5. Termination (or expiry) of this Agreement, shall automatically terminate all Assignments in force as at the date of such termination (or expiry); all ongoing Assignments as at the date of such termination shall terminate with immediate effect.
- 11.6. The termination of any Assignment shall not effect any other Assignment, or this Agreement.
- 11.7. Termination of this Agreement shall be without prejudice to any accrued rights or remedies of either Party.
- 11.8. Termination of this Agreement shall not affect the coming into force, or continuance in force, of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.
- 11.9. On termination of this Agreement for any reason:
  - 11.9.1. you shall cease to have access to the Service; and
  - 11.9.2. you shall pay to us any outstanding amounts due to us as Fees which relate to the period prior to termination, whether invoiced or not.

## **12. Data protection**

- 12.1. The Parties acknowledge that, in relation to their obligations under this Agreement, they will each act as independent Controllers in respect any Personal Data relating to the Users ("**User Data**"). For the avoidance of doubt, it is not envisaged that you will be processing User Data as a Processor on our behalf.
- 12.2. This Clause 12 sets out the framework for the sharing of User Data between the Parties. Each Party acknowledges that it (the "**Data Discloser**") will regularly disclose to the other Party (the "**Data Recipient**") User Data, collected by the Data Discloser for the Agreed Purposes. In no event will the Parties process the User Data as joint Controllers.
- 12.3. Each Party shall comply with all the obligations imposed on a Controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one Party shall, if not remedied within 30 days of written notice from the other Party, give grounds to the other Party to terminate the Agreement with immediate effect.
- 12.4. The Data Discloser shall be responsible for:
  - 12.4.1. complying with all necessary transparency and lawfulness requirements under Data Protection Legislation in order to disclose the User Data to the Data Recipient to Process for the Agreed Purposes; and
  - 12.4.2. presenting to the relevant Data Subjects a link to, or a copy of, the transparency notice as provided by Data Recipient to the Data Discloser in a form agreed between the Parties to enable the Data Recipient to comply its necessary transparency and lawfulness requirements under Data Protection Legislation.
- 12.5. Each Party shall:
  - 12.5.1. ensure that it has all necessary notices and consents in place to enable lawful transfer of the User Data to the Permitted Recipients for the Agreed Purposes;
  - 12.5.2. give full information to any Data Subject whose Personal Data may be Processed under this Agreement of the nature such Processing. This includes giving notice that, on the termination of the Agreement, Personal Data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
  - 12.5.3. Process the User Data only for the Agreed Purposes;
  - 12.5.4. not disclose or allow access to the User Data to anyone other than the Permitted Recipients;
  - 12.5.5. ensure that all Permitted Recipients are subject to written contractual obligations concerning the User Data (including, obligations of confidentiality) which are no less onerous than those imposed by this Clause 12; and
  - 12.5.6. ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.
- 12.6. Each Party shall provide reasonable assistance to the other Party in complying with the Data Protection Legislation. In particular, each Party shall:
  - 12.6.1. promptly inform the other Party about the receipt of any Data Subject access request relating to the other Party's Processing of Personal data, provide the other Party with reasonable assistance in complying with any such Data Subject access request, and not disclose or release any User Data in response to such a Data Subject access request without first



- consulting the other Party wherever possible;
- 12.6.2. assist the other Party, at the cost of the other Party, in responding to any request from a Data Subject 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;
  - 12.6.3. notify the other Party without undue delay on becoming aware of any breach of the Data Protection Legislation relating to the sharing of Personal Data under this Clause 12;
  - 12.6.4. use compatible technology for the Processing of User Data to ensure that there is no lack of accuracy resulting from Personal Data transfers;
  - 12.6.5. maintain complete and accurate records and information to demonstrate its compliance with this Clause 12; and
  - 12.6.6. provide the other Party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the Parties' compliance with the Data Protection Legislation.
- 12.7. You shall indemnify us against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) that we suffer or incur by the arising out of or in connection with the breach of the Data Protection Legislation by you, your employees or agents, provided that we give you prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.
- 12.8. The rights and remedies provided under this Clause 12 are in addition to, and not exclusive of, each other and/or any rights or remedies provided by law.

### **13. Indemnity**

- 13.1. You shall indemnify us, and keep us indemnified, against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by us arising out of or in connection with:
- 13.1.1. your breach, negligent performance or non-performance of this Agreement;
  - 13.1.2. the enforcement of this Agreement;
  - 13.1.3. any claim made against us for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with any the information and Content provided by you to us under this Agreement;
  - 13.1.4. any claim made against us by a third party (including a User) arising out of or in connection with any Roles, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by you, your employees, agents or subcontractors;  
and/or
  - 13.1.5. any claim made against us by a third party (including a User) for death, personal injury or damage to property arising out of or in connection with a Roles, to the extent that such claim is attributable to the acts or omissions of you, your employees, agents or subcontractors.
- 13.2. This indemnity in Clause 13.1 shall apply whether or not we have been negligent or at fault.

### **14. Force Majeure**

- 14.1. Subject to Clause 10.2, neither Party shall have any Liability for any breach, hindrance or delay in performance of its obligations under this Agreement which is caused by an Event of Force Majeure, regardless of whether the circumstances in question could have been foreseen. An "**Event of Force Majeure**" means any cause outside of the Party's reasonable control, including act of God, actions or omissions of third parties (including hackers, suppliers, couriers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil war, civil commotion, war, hostilities, threat of war, warlike operations, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions, national emergencies, terrorism, nuclear, chemical or biological contamination or sonic boom, piracy, arrests, restraints or detentions of any competent authority, blockade, strikes or combinations or lock-out of workmen, epidemic, fire, explosion, storm, flood, drought, adverse weather conditions, loss at sea, earthquake, natural disaster, accident, collapse of building structures, failure of plant machinery or machinery or third party computers or third party hardware or vehicles, failure or problems with public utility supplies (including general: electrical, telecoms, water, gas, postal, courier, communications or Internet disruption or failure), shortage of or delay in or inability to obtain supplies, stocks, storage, materials, equipment or transportation.
- 14.2. Each of the Parties agrees to inform the other upon becoming aware of an Event of Force Majeure, such information to contain details of the circumstances giving rise to the Event of Force Majeure.
- 14.3. The performance of each Party's obligations shall be suspended during the period that the circumstances persist and such Party shall be granted an extension of time for performance equal to the period of the delay.
- 14.4. Each Party shall bear its own costs incurred by the Event of Force Majeure.

- 14.5. If the performance of any obligations is delayed under this Clause 14.1, each Party shall nevertheless accept performance as and when the other shall be able to perform.
- 14.6. If the Event of Force Majeure continues without a break for more than one month, either Party may terminate this Agreement immediately by notice to the other, in which event neither Party shall have any Liability (subject to Clause 10.2) to the other Party by reason of such termination.
- 14.7. If we have contracted to provide identical or similar services to more than one customer and we are prevented from full meeting our obligations to you due to an Event of Force Majeure, we may decide at our absolute discretion which contracts we will perform and to what extent.

#### **15. Notices**

- 15.1. Any notice given to either Party under or in connection with this Agreement shall be in writing, addressed to the relevant Party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that Party may have specified to the other Party in writing, and shall be delivered personally, sent by pre-paid first class post, recorded delivery or commercial courier.
- 15.2. A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 15.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 15.3. The provisions of this Clause 15 shall not apply to the service of any proceedings or other documents in any legal action.

#### **16. Assignment**

You may not assign, transfer, charge or otherwise encumber, create any trust over, or deal in any manner with, this Agreement or any right, benefit or interest under it, nor transfer, novate or sub-contract any of your obligations under it, without our prior written consent (such consent not to be unreasonably withheld or delayed).

#### **17. Severance.**

- 17.1. If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 17.2. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

#### **18. Waiver**

A waiver of any right or remedy under this Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

#### **19. Third party rights**

- 19.1. Subject to Clause 19.2, no term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party.
- 19.2. The Parties intend that any right conferred upon Broadstone under this Agreement shall be enforceable by any company within the Broadstone Group pursuant to and in accordance with the Contracts (Rights of Third Parties) Act 1999.

#### **20. Variation**

We may change this Agreement at any time by sending you an email with details of the change or notifying you of a change when you next access the Service. The new terms may be displayed on-screen and you may be required to read and accept them to continue your use of the Service. If you do not agree with the changes, you may terminate this Agreement in accordance with Clause 11.1.

#### **21. No partnership**

Nothing in this Agreement shall constitute a partnership or employment or agency relationship between the Parties.

#### **22. Counterparts**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

#### **23. Governing law and jurisdiction**

- 23.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.
- 23.2. The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.