

TERMS AND CONDITIONS

(these “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 Services (including listing of roles for Users to fill) and related services on the Platform;

“**Agreed Purpose**”: has the meaning given to it in Clause 13.4;

“**Agreement**”: these Terms and Conditions together with any document referred to in these Terms and Conditions, save for the Contract;

“**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);

“**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;

“**Company**”, “**you**” or “**your**”: the recipient of services from us under this Agreement, whose details may be as set out in the Registration Process;

“**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, [or] you and a third party or you and a User directly, in respect of the Engagements;

“**Content**”: any information and data you provide to us to list on the Platform relating to Roles and your Profile;

“**Controller**”: has the meaning given in the Data Protection Act 2018;

“**Data Protection Legislation**”: the Data Protection Act 2018, the General Data Protection Regulation ((EU) 2016/679) as enacted into English law (“**GDPR**”) as revised and superseded from time to time, Directive 2002/58/EC as updated by Directive 2009/136/EC, and any other laws and regulations relating to the processing of personal data and privacy which apply to us or you and, if applicable, the guidance and codes of practice issued by the relevant data protection or supervisory authority;

“**Data Subject**”: has the meaning given in the Data Protection Act 2018;

“**Engagement**”: the engagement of a User by you or (where applicable) any third party, whether on a permanent or a temporary basis;

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

“**Fees**”: the fees as imposed by us from time to time, as may be notified to you by us during the Registration Process or at any other time during our provision of the Services to you;

“**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**”: shall mean 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;

“**Personal Data**”: has the meaning given in the Data Protection Act 2018;

“**Personal Data Breach**”: has the meaning given in the GDPR;

“**Processor**”: has the meaning given in the Data Protection Act 2018;

“**Processing**”: has the meaning given in the Data Protection Act 2018 and “**Process**” shall be determined accordingly;

“**Shared User Data**”: the User Data that is to be shared between the Parties under Clause 13.8;

“**Special Categories of Personal Data**”: has the meaning given in the Data Protection Act 2018;

“**Platform**”: the web-based portal, hosted at app.buildstream.co;

“**Profile**”: the profile page we will create for you on the Platform where you can upload and detail information and data about your business to a User, and list information about Roles;

“**Registration Application**”: the forms we require you to complete during the Registration Process;

“**Registration Process**”: the process that we require you to undertake so that we can register you as a recipient of the Services;

“**Roles**”: the roles, listed by you, relating to your Engagement of Users on a permanent, fixed term, or temporary basis;

“**Services**”: access to, and use of, the services and functionality available via the Platform, including:

i) listing Roles on the Platform; and

ii) where appropriate and relevant to the services we are providing to you, providing access to User Profiles;

“**User**”: an individual or limited company that is able to view and carry out job roles listed by you using and/or any other recipient of our services in their use of our web-based platform;

“**User Data**”: has the meaning given to it in Clause 13.1; and

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

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;

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 Services.

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 This Agreement shall be legally formed and the Parties shall be legally bound when we confirm your submission of the Registration Application. Your submission to us of the Registration Application shall be deemed to be an offer by you to us to gain access to the Services, subject to the provisions of these Terms and Conditions, and our confirmation of such submission shall be considered acceptance of such an offer.

2.5 If you provide to us a purchase order for use of the Services, 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 Terms and Conditions and any details we set out during the Registration Process, then the details that we set out during the Registration Process shall prevail over these 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 12 months (“**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 Services

4.1 We shall:

4.1.1 subject to Clause 4.7, use reasonable endeavours to make the Services available to you;

4.1.2 enable the listing of Roles on the Platform; and

4.1.3 communicate with you as to which Users you would like us to share your Roles with and share such Roles with those Users.

4.2 We warrant that:

4.2.1 we shall use our reasonable skill and care in providing the Services;

4.2.2 we shall provide the Services in a professional, competent and workmanlike manner;

4.2.3 we have all necessary rights, permissions and consents to enter into, and perform our obligations under, this Agreement; and

4.2.4 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 Platform, you shall not unreasonably withhold or delay such approval.

4.4 We shall make available the Services using information, data and criteria supplied by you. It is your responsibility to provide accurate and updated information and data.

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 Platform 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, subject to our compliance with Data Protection Legislation, at our absolute discretion, from time to time either host the Services 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 and agree that we cannot guarantee uninterrupted, timely or error-free access to the Services 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 Services; however, we shall use our reasonable endeavours to minimise downtime of the Services. Subject to us having used such reasonable endeavours, we do not warrant that the provision of the Services to you will be uninterrupted or error-free.

4.8 We reserve the right at our absolute discretion to make changes to the Services at any time (without notice).

4.9 We do not warrant that the Services 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 11.2) 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 Platform. Except as expressly stipulated in this Agreement, we shall not be responsible or have any Liability (subject to Clause 11.2) 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 (at our sole discretion):

4.11.1 immediately remove or halt the posting of any Roles;

4.11.2 prevent or restrict access to the Services; and/or

4.11.3 take any other action to preserve and protect the Platform 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 Platform 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 Services, the Platform, the Account and our obligations under this Agreement.

5. Platform and Account

5.1 We shall allocate to you the Account for optimised use of the Services.

5.2 You may allocate a particular employee of your business access to the Account to receive notifications regarding Roles posted and User interaction in relation to those Roles.

5.3 You may access the Account and the Platform only with a browser that is compatible with the Services, including any security features that are part of the Services.

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 Platform. 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 any Role details by accessing your Account through the Platform.

5.7 You agree to notify us immediately of any changes which are relevant to your Account by informing us through the Platform where possible or otherwise by emailing us at hello@buildstream.com.

5.8 We reserve the right to prevent or restrict you using the Services.

6. Role Conditions

Conditions for posting a Role

6.1 When posting a Role, you must follow the instructions on the Platform as to how to post a Role and for making changes to the Role before you submit it to the Platform.

6.2 When you post a Role through the Platform, we shall send you a notification through the Platform.

6.3 In order to post a Role on the Platform, the following conditions shall apply:

6.3.1 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 11.2) 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, with whom we have shared a Role in accordance with Clause 4.1.3, may respond to a Role by contacting you independently from the Platform. You acknowledge that we do not guarantee any response to Roles posted on the Platform, or that the answers given by the User are from people qualified for the position advertised.

6.5 You acknowledge and agree that each Engagement 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 Once a Role is accepted by a User, it shall be your responsibility to satisfy yourself of the suitability of the User, and you are responsible for evaluating any references provided by the User and for verifying that the User has the required experience, training, qualifications, licences, satisfactory DBS check and any authorisation which may be required by law or by any professional body.

6.8 You acknowledge that we shall have no Liability (subject to Clause 11.2), and you bear sole responsibility and Liability for the consequences of your use of the Services, the listing of Roles on the Platform, any acceptance of a User for those Roles and your entering into any Engagement.

6.9 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 a User:

6.9.1 rescind this Agreement (in whole or in part); and/or

6.9.2 remove any Role from the Platform; and/or

6.9.3 close your Account.

7. Your obligations

7.1 You shall:

7.1.1 ensure that the information submitted to us during the Registration Process is 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 Process 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 Engagement.

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 11.2) 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 Platform.

7.4 You shall not in any way use the Platform or the Services, or submit to us or the Platform or the Services, or to any user of the Platform or the Services, 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 Services; 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 Platform or the Services 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 Services are 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 Services and the making available of Roles through the Platform is in your best interests;

and you bear sole responsibility and Liability (subject to Clause 11.2) for the consequences of your use of the Services and the making available of Roles.

7.7 By providing to us information which we will display on the Platform:

- 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 Platform on a regular basis 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 12.4.1.
- 7.10 We shall not be responsible or have any Liability (subject to Clause 11.2) 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 Platform; or
 - 7.10.2 the listing of any Roles on or through the Platform that is in breach of any provision of this Agreement or any applicable laws.
- 8. Payments under this Agreement**
- 8.1 In consideration of us providing to you the Services pursuant to this Agreement, you shall pay to us the Fees.
- 8.2 You shall pay the Fees to us at such times and in such instalments as set out by us during the Registration Process or as we may direct from time to time. Unless set out otherwise in this Agreement, we may issue invoices to you for the Fees at such intervals as we may, at our absolute discretion, consider appropriate.
- 8.3 You shall pay all amounts due to us under this Agreement by any payment method that we may stipulate from time to time. No payment shall be considered paid until we have received it in cleared funds in full.
- 8.4 The Fees are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by you following delivery of a valid VAT invoice by us.
- 8.5 Your payment of all amounts due to us under this Agreement shall be in the currency in force in England from time to time.
- 8.6 We reserve the right to increase the Fees by giving you not less than 30 days' notice of such increase taking effect. If you would prefer for this Agreement to come to an end, you may terminate this Agreement by the provision to us of 10 Business Days to take effect at the end of such 30 day notice period of the increase.
- 8.7 You must pay all amounts due under this Agreement in full without any set-off, counterclaim, deduction or withholding except as required by law. We may, without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.
- 8.8 If you are late in paying any part of any monies due to us under this Agreement and such payment remains outstanding for seven days following us providing notice to you of such outstanding payment, we may (without prejudice to any other right or remedy available to us whether under this Agreement or by any statute, regulation or bye-law) do any or all of the following:
- 8.8.1 charge interest and other costs on the overdue amount due but unpaid at the annual rate of interest set under Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 from time to time from the due date until payment (after as well as before judgment), such interest to run from day to day and to be compounded monthly;
 - 8.8.2 recover our costs and expenses and charges (including legal and debt collection fees and costs) in collecting the late payment; and
 - 8.8.3 suspend performance of this Agreement until payment in full has been made.
- 9. Intellectual Property Rights**
- 9.1 We and you acknowledge that, as between us and you, we and our licensors own all Intellectual Property Rights in the Account,

- the Platform and the Services. We grant to you a limited non-transferable licence to make use of the Account, the Platform and the Services in accordance with this Agreement. This licence expressly excludes, without limitation:
- 9.1.1 any resale or commercial use of the Platform or the Services;
 - 9.1.2 modifying, distributing, copying, republishing or making any derivative of the Platform or the Services; and
 - 9.1.3 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.
- 9.2 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.
- 9.3 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.
- 10. Confidentiality**
- 10.1 Each Party shall keep the other Party's Confidential Information confidential and shall not:
- 10.1.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement; or
 - 10.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 10.
- 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.
- 10.2 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:
- 10.2.1 it informs such employees, agents and subcontractors of the confidential nature of the Confidential Information before disclosure; and
 - 10.2.2 it does so subject to obligations equivalent to those set out in this Clause 10.
- 10.3 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 10.3, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.
- 10.4 The obligations of confidentiality in this Clause 10 shall not extend to any matter which either Party can show:
- 10.4.1 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
 - 10.4.2 was independently developed by it; or
 - 10.4.3 was independently disclosed to it by a third party entitled to disclose the same; or
 - 10.4.4 was in its written records prior to receipt.
- 10.5 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.
- 10.6 We may identify you as a user of the Services, provided that, in doing so, we shall not reveal any of your Confidential Information (without your prior written consent).
- 10.7 On termination of this Agreement, each Party shall:
- 10.7.1 return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;

- 10.7.2 erase all the other Party's Confidential Information from its computer systems (to the extent possible); and
- 10.7.3 certify in writing to the other Party that it has complied with the requirements of this Clause 10.7, 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 10 shall continue to apply to any such documents and materials retained by a recipient Party following termination of this Agreement for any reason.
- 10.8 The provisions of this Clause 10 shall continue to apply after termination of this Agreement.
- 11. Limitation of Liability**
- 11.1 This Clause 11 prevails over all of this Agreement and sets forth our entire Liability, and your sole and exclusive remedies, in respect of:
- 11.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of this Agreement or any services in connection with this Agreement; or
- 11.1.2 otherwise in relation to this Agreement or entering into this Agreement.
- 11.2 Neither Party excludes or limits its Liability for:
- 11.2.1 its fraud; or
- 11.2.2 death or personal injury caused by its Breach of Duty; or
- 11.2.3 any breach of the obligations implied by Section 2 of the Supply of Goods and Services Act 1982; or
- 11.2.4 any other Liability which cannot be excluded or limited by any applicable laws.
- 11.3 Subject to Clause 11.2, and other than any Liability arising pursuant to this Agreement, we do not accept, and we hereby exclude, any Liability for Breach of Duty.
- 11.4 Subject to Clause 11.2, we shall not have any Liability in respect of any:
- 11.4.1 indirect or consequential losses, damages, costs or expenses;
- 11.4.2 loss of actual or anticipated profits;
- 11.4.3 loss of contracts;
- 11.4.4 loss of use of money;
- 11.4.5 loss of anticipated savings;
- 11.4.6 loss of revenue;
- 11.4.7 loss of goodwill;
- 11.4.8 loss of reputation;
- 11.4.9 loss of business;
- 11.4.10 ex gratia payments;
- 11.4.11 loss of operation time;
- 11.4.12 loss of opportunity;
- 11.4.13 loss caused by the diminution in value of any asset; or
- 11.4.14 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 11.4.2 to 11.4.14 (inclusive) of this Clause 11.4 apply whether such losses are direct, indirect, consequential or otherwise.
- 11.5 Subject to Clause 11.2, 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 the greater of:
- 11.5.1 100% of all amounts paid and total other sums payable, in aggregate, by you to us under this Agreement in the 12 months prior to the date on which the claim first arose; or
- 11.5.2 £100 if you have not paid us.
- 11.6 The limitation of Liability under Clause 11.5 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.

- 11.7 You acknowledge and accept that we only make the Services available on the express condition that we will not be responsible, nor, subject to Clause 11.2, 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.
- 11.8 The provisions of this Clause 11 shall continue to apply after termination of this Agreement.
- 12. Termination**
- 12.1 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. By terminating this Agreement in accordance with Clause 12.1 you acknowledge that no refunds for payments already made will be given and any outstanding amounts owed shall be payable.
- 12.2 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 discretion) 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.
- 12.3 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.
- 12.4 Each Party may terminate this Agreement immediately by notice in writing to the other Party if:
- 12.4.1 subject to Clause 12.1, 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;
- 12.4.2 the other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- 12.4.3 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; and/or
- 12.4.4 the other Party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.
- 12.5 Termination of this Agreement shall be without prejudice to any accrued rights or remedies of either Party.
- 12.6 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.
- 12.7 On termination of this Agreement for any reason:
- 12.7.1 you shall cease to have access to the Services; and
- 12.7.2 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.
- 13. Data Protection**
- 13.1 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 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.
- 13.2 This Clause 13 sets out the framework for the sharing of User Data between the Parties as independent Controllers. It defines the principles and procedures that the Parties shall adhere to and the responsibilities the Parties owe to each other in respect of the Shared User Data.
- 13.3 The Parties consider that the sharing of User Data under this Clause 13 is necessary for the provision of the Services by us to you under this Agreement, with the aim of such data sharing being for us to facilitate you entering into Engagements with Users in respect of Roles.
- 13.4 The Parties agree to only Process Shared User Data for the following purposes:
- 13.4.1 your consideration of Users, that apply for a Role;
- 13.4.2 our communication with Users and you in respect of prospective Engagements; and
- 13.4.3 to facilitate your Engagement of Users to carry out particular Roles;
- where all such purposes are relevant prior to the Engagement of a User by you (the "Agreed Purpose"). The Parties shall not process Shared User Data in a way that is incompatible with the Agreed Purpose. Once a User is the subject of an Engagement with you, you shall be absolutely responsible, as an independent Controller, for your Processing of that User Data.
- 13.5 Each Party shall appoint a single point of contact who will work together to reach an agreement with regards to any issues arising from the Shared User Data and to actively improve the effectiveness of the data sharing between the Parties.
- 13.6 Each Party must ensure compliance with Data Protection Legislation at all times.
- 13.7 Each Party has such valid registrations as are required by its national Supervisory Authority.
- 13.8 The following types of User Data may be shared between the Parties under this Agreement:
- 13.8.1 first name, maiden name, last name, title, date of birth and gender;
- 13.8.2 address, email address and telephone numbers;
- 13.8.3 education details;
- 13.8.4 employment history;
- 13.8.5 right to work information (including immigration status);
- 13.8.6 emergency contact and next of kin details;
- 13.8.7 referee details (and information that they share with us);
- 13.8.8 nationality;
- 13.8.9 a copy of identification documentation (such as passport and driving licence);
- 13.8.10 any other information that the User shares with us from time to time; and
- 13.8.11 information about criminal convictions and offences; ("Shared User Data").
- 13.9 Each Party shall ensure that it has legitimate grounds under the Data Protection Legislation for the Processing of Shared User Data.
- 13.10 The Parties each agree to provide such assistance as is reasonably required to enable the other Party to comply with requests from Data Subjects to exercise their rights under the Data Protection Legislation within the time limits imposed by the Data Protection Legislation. Each Party shall maintain a record of individual requests for information, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request.
- 13.11 The Parties shall retain Shared User Data in accordance with any statutory or professional retention periods applicable in their respective industries.
- 13.12 You shall ensure that any Shared User Data is returned to us or destroyed in accordance with our instructions once processing of the Shared Personal Data is no longer necessary. Following the deletion of Shared User Data, you shall notify us that the Shared User Data in question has been deleted.
- 13.13 You shall not transfer Shared User Data to any third party, including granting a third-party Controller access to the Shared User Data (including other entities that may be seeking to enter into an Engagement with a User), without our express prior written consent, except that you may appoint a third-party Processor to Process the Shared User Data provided that you comply with Article 28 and Article 30 of GDPR and shall remain liable to us for the acts and/or omissions of any such Processor.
- 13.14 You shall not disclose or transfer Shared User Data outside the United Kingdom unless you have ensured that such Shared User Data is provided with protection equivalent to that which is provided under the Data Protection Legislation.
- 13.15 The Parties undertake to have in place appropriate technical and organisational security measures to:
- 13.15.1 prevent:
- (a) unauthorised or unlawful processing of the Shared User Data; and
- (b) the accidental loss or destruction of, or damage to, the Shared User Data; and
- 13.15.2 ensure a level of security appropriate to:
- (a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
- (b) the nature of the Shared User Data to be protected.
- The Parties shall keep such measures under review and shall carry out such updates as are appropriate.
- 13.16 Each Party shall ensure that its staff members are appropriately trained to handle and process the Shared User Data in accordance with Data Protection Legislation and have entered into confidentiality agreements relating to the processing of Personal Data.
- 13.17 Each Party shall comply with its obligation to report a Personal Data Breach to the appropriate Supervisory Authority and (where applicable) Data Subjects under Article 33 of GDPR and shall each inform the other Party promptly of any Personal Data Breach irrespective of whether there is a requirement to notify any Supervisory Authority or Data Subject(s).
- 13.18 The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Personal Data Breach in an expeditious and compliant manner.
- 13.19 Each Party undertakes to inform the Data Subjects, in accordance with Data Protection Legislation, of the purposes for which it will Process their Personal Data, the legal basis for such purposes and such other information as is required by Article 14 of the GDPR including:
- 13.19.1 if Shared User Data will be transferred to a third party, that fact and sufficient information about such transfer and the purpose of such transfer to enable the Data Subject to understand the purpose and risks of such transfer; and
- 13.19.2 if Shared User Data will be transferred outside the United Kingdom, that fact and sufficient information about such transfer, the purpose of such transfer and the safeguards put in place to enable the Data Subject to understand the purpose and risks of such transfer.
- 13.20 In the event of a dispute or claim brought by a Data Subject or the Supervisory Authority concerning the processing of Shared User Data against either or both Parties, the Parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- 13.21 The Parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or by the Supervisory Authority. If they do participate in the proceedings, the Parties may elect to do so remotely (such as by telephone or other electronic means).
- 13.22 Each Party warrants that it will:
- 13.22.1 respond within a reasonable time and as far as reasonably possible to enquiries from the relevant Supervisory Authority in relation to the Shared User Data; and

13.22.2 respond to any request made by a Data Subject seeking to exercise their rights under the Data Protection Legislation.

14. Indemnity

14.1 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:

14.1.1 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;

14.1.2 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;

14.1.3 any claim by a User arising out of or in connection with any breach or alleged breach of the terms of the Contract;

14.1.4 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.

14.2 This indemnity in Clause 14.1 shall apply whether or not we have been negligent or at fault.

15. Notices

15.1 Any notice given to either Party under this Agreement shall be in writing and shall be served:

15.1.1 by pre-paid recorded delivery or by hand if addressed to the Party concerned at its registered office or principal place of business;

15.1.2 by overnight courier; or

15.1.3 by e-mail provided that a confirmatory copy is given by hand or sent by pre-paid recorded delivery in accordance with Clause 15.1.1 within one Business Day of transmission.

15.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 15.1.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or if sent by email, at the time at which the email has been sent.

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 A person who is not a Party shall not have any rights under or in connection with this Agreement.

20. Variation

We may vary this Agreement at any time on the provision to you of 90 days' written notice. If, following receipt of such notice from us, you would prefer for this Agreement to come to an end, you may terminate this Agreement by the provision to us of written notice to take effect at the end of such 90 day notice period of the variation.

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.