

GRADTOUCH LIMITED: CUSTOMER 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 requires otherwise:

"Agreement": these Terms and Conditions together with the Order and any document referred to in these Terms and Conditions or the Order;

"Bespoke Media": deliverables we develop as part of the Services as set out in the Order or a Change Control Note, where such deliverables are not consistent with the scope of Standard Media;

"Bespoke Media Fees": the fees payable by you to us for our provision of the Bespoke Media, as set out in the Order or the relevant Change Control Note;

"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) a day when the clearing banks in the City of London are not physically open for business;

"Change": any change to this Agreement including to any of the Services;

"Change Control Note": has the meaning given to it in Clause 23.7;

"Commencement Date": the date of commencement of this Agreement in accordance with Clause 2.4;

"Confidential Information": any information in any form or medium obtained by or on behalf of either 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 consider to be confidential, whether disclosed or obtained before, on or after the Commencement Date, together with any reproductions of such information or any part of it;

"Contract Year": a period of 12 months (or such shorter period if this Agreement is terminated earlier), commencing on the Commencement Date and/or each anniversary of the Commencement Date

"Controller": has the meaning set out in GDPR;

"Customer Data": the data inputted by you, your authorised users, or us on your behalf, for the purpose of using the Services or facilitating your use of the Services, and which may include Personal Data;

"Customer Platform": the web-based subscription services we provide to you under this Agreement in respect of the Services, allowing you to access certain functionality and reports in respect of your usage of the Services, depending on the specific Package set out in the Order;

"Data Protection Laws": in relation to any personal data which is processed in the performance of this Agreement, the EU Data Protection Directive 95/46/EC until 25 May 2018 (including the Data Protection Act 1998) and GDPR (on and from 25 May 2018), 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 GDPR;

"Event of Force Majeure": has the meaning given to it in Clause 17.1;

"Fees": the fees payable by you to us under this Agreement for our provision of the Services, as stipulated in the Order, including the Package Fees, the Inventory Fees and, where applicable, the Bespoke Media Fees;

"Filming Day": a day where we will come to an agreed location to obtain Media (as set out in the Order or Change Control Notice), to be added to Your Profile;

"GDPR": the General Data Protection Regulation (EU 2016/679);

"GradTouch": the Graduate-facing platform, allowing Graduates to view potential roles added to it by employers using the Customer Platform, and make applications and communicate with potential employers in respect of such roles;

"Graduates": the graduates accessing the end-user facing platform reflecting your use of the Customer Platform, to view potential roles,

and make applications and communicate with potential employers in respect of such roles;

"Inventory": such ancillary products and services as are set out in the Order that we may provide to you in respect of the Services;

"Inventory Fees": the fees payable by you to us in respect of the Inventory, as set out in the Order;

"Library": the media library we make available to you as part of certain Packages for access to particular standard media to include in Your Profile;

"Library Media": any media from the Library that you include in Your Profile from time to time;

"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);

"Manager": has the meaning given to it in Clause 10.1;

"Media": Bespoke Media and/or Standard Media;

"Media Plan": the plan that may be agreed between the Parties from time to time for the provision and delivery of the Media by us;

"Order": the document we provide to you (in offline or online format) containing specific information relating to the particular services supplied or to be arranged to be supplied by us to you;

"Package": the subscription software products in respect of which we provide to you the Services, access to which we provide to you under this Agreement, as more particularly described in the any relevant specification set out in, or annexed to, the Order;

"Package Fees": the fees payable by you to us for access to the relevant Package, as set out in the Order;

"Party": us or you, and **"Parties"** means both of us and you;

"Personal Data": has the meaning given to it by GDPR, and relates only to personal data, or any part of such personal data, of which you are the Controller and in relation to which we are the Processor and providing services under this Agreement;

"Personal Data Breach": has the meaning given to it by GDPR;

"Personnel": all persons employed or engaged by us to provide the Services;

"Platform": the Customer Platform and GradTouch;

"Process" and **"Processing"**: has the meaning given to it by GDPR;

"Processor": has the meaning set out in GDPR;

"Rates": our time and materials rates from time to time for the provision of Services by the Personnel;

"Roles": the roles which are to be listed by you on the Platform for viewing by Graduates;

"Services": the services we are to provide under this Agreement, including an agreed level of access to an online platform for promoting roles within your business to graduates and allowing such graduates to communicate with you in respect of such roles (including by applying for such roles), and the provision of media to support such promotion, as more particularly described in the Order;

"Special Categories of Personal Data": those categories of data listed in Article 9(1) GDPR;

"Specification": the specification of a particular Package, as set out in, or annexed to, the Order;

"Standard Media": deliverables we develop as part of the Services, the scope of which we use across our customer-base and is not tailored to you save in execution, including such standard media as we obtain during a day of filming at your premises;

"Supervisory Authority": means (a) an independent public authority which is established by a Member State pursuant to Article 51 GDPR; and (b) any similar regulatory authority responsible for the enforcement of Data Protection Laws;

"Support Services": the maintenance and support services we provide in respect of the Platform;

"Term": the term for which this Agreement continues in full force and effect;

"Users": those of your employees who you authorise to use the Customer Platform;

"Your Branding": your branding that you authorise us to use in Your Profile or otherwise in respect of GradTouch;

"Your Media": content that you provide to us for inclusion in Your Profile, including text, video footage and photographs; and

"Your Profile": has the meaning given to it in Clause 5.1;

- 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, shall not limit the sense of the words preceding or following those terms, and shall be deemed to be followed by the words **"without limitation"** unless the context requires otherwise; and
- 1.9 a reference to **"writing"** or **"written"** includes in electronic form and similar means of communication (except under Clause 18).

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. These Terms and Conditions apply to all 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 Commencement Date 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 The Order shall be in the form that we require from time to time. This Agreement shall be legally formed and the Parties shall be legally bound when we have received and accepted the Order that you have sent to us. Submission to us by you of the Order (whether in offline or online format) shall be deemed to be an offer by you to purchase Services (as specified in the Order) from us, subject to the provisions of this Agreement, and our acceptance of that Order (whether by counter-signature on the Order or otherwise) shall be considered acceptance of such offer, but the requirements for us to perform any of our obligations under this Agreement shall be conditional upon our receipt from you of any advance payment of Fees as required under this Agreement.
- 2.5 If you provide to us a purchase order for your receipt of Services other than as set out in Clause 2.4, that purchase 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 the Order, then:
 - 2.6.1 the Order shall prevail over
 - 2.6.2 these Terms and Conditions.

3. Users

- 3.1 We hereby grant to you a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Users to use the Customer Platform during the Term.
- 3.2 In relation to the Users, you undertake that:
 - 3.2.1 each User shall keep a secure password for his use of the Customer Platform, that such password shall be changed when prompted and that each User shall keep his password confidential;
 - 3.2.2 you shall maintain a written, up to date list of current Users and provide such list to us within five Business Days of our written request at any time or times;
 - 3.2.3 you shall permit us to audit the Customer Platform in order to establish the name and password of each User; such audit may be conducted no more than once per quarter, at our expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with your normal conduct of business;
 - 3.2.4 any act or omission of any User shall be considered as if it was your act or omission; and
 - 3.2.5 if any of the audits referred to in Clause 3.2.3 reveal that any password has been provided to any individual who is not a User, then, without prejudice to our other rights, you shall promptly disable such passwords and we shall not issue any new passwords to any such individual.
- 3.3 You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Customer Platform and, in the event of any such unauthorised access or use, promptly notify us.
- 3.4 The rights provided under this Clause 3 are granted to you only, and shall not be considered granted to any of your subsidiaries, holding companies or other group companies.

4. The Customer Platform

- 4.1 We undertake that the Customer Platform will be made available substantially in accordance with the relevant Specification and with reasonable skill and care. Such undertaking shall not apply to the extent of any non-conformance which is caused by use of the Customer Platform contrary to our instructions, or modification or alteration of the Customer Platform by any party other than us or our duly authorised contractors or agents. Notwithstanding the foregoing, we:
 - 4.1.1 do not warrant that your use of the Customer Platform will be uninterrupted or error-free, or secure from unauthorised access; and
 - 4.1.2 are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the Internet, and you acknowledge that the Platform may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 4.2 If the Customer Platform does not conform with the undertaking in Clause 4.1, we will provide the Support Services as your sole and exclusive remedy for such failure. The extent of our obligation to provide the Support Services shall be for us to use our reasonable endeavours to:
 - 4.2.1 correct any errors or omissions in the Services, or provide you with an alternative means of accomplishing the desired performance, as soon as practicable during Business Hours after receiving full and clear information on them; and
 - 4.2.2 respond to a request for Support Services within a reasonable time, but we cannot guarantee any particular result or outcome nor within any particular time. In particular, without limitation, we may need to obtain provision in turn from a third party that assists us with the provision of the Support Services.The Support Services exclude the resolution of faults or defects that arise as a result of your failure to comply with this Agreement or any other agreement between you and us. We may provide those excluded services as part of the Support Services at our absolute discretion; subject to Clause 15.2, we will not have any Liability for our provision of any of those excluded services to you.
- 4.3 This Agreement shall not prevent us from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

- 4.4 We warrant that we have and will maintain all necessary licences, consents, and permissions necessary for the performance of our obligations under this Agreement.
- 4.5 Whilst we use our reasonable endeavours to make the Platform available, we shall not have any Liability (subject to Clause 11.2) if for any reason the Platform is unavailable for any time or for any period. We make no warranty that your access to the Customer Platform will be uninterrupted, timely or error-free; due to the nature of the Internet, this cannot be guaranteed.
- 4.6 Subject to compliance with Data Protection Laws and Clause 14.5.4, we may, at our absolute discretion, from time to time either host the Platform (or any part of it) 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 on you or reasonably restrict your rights due to the requirements of the third-party suppliers.
- 4.7 We reserve the right, at any time, to carry out repairs, maintenance or introduce new facilities and functions in respect of all or any part of the Platform.
- 4.8 We will provide you access to the Library for certain Packages, as set out in the Order.
- 4.9 You shall:
- 4.9.1 ensure that the Users use the Customer Platform in accordance with this Agreement and you shall be responsible for any User's breach of this Agreement;
- 4.9.2 ensure that your network and systems comply with the relevant specifications provided by us from time to time for access to the Customer Platform;
- 4.9.3 report any faults or suspected faults with or in the Platform to us immediately upon discovery;
- 4.9.4 report to us any abuse of the Internet (including spam, hacking and phishing) that you consider to have taken place through the use of the Platform by any person, and you shall include in such report as much information as you are able to provide to us relating to the type of abuse that you have witnessed;
- 4.9.5 keep any password for your access to the Customer Platform strictly confidential and secure, and immediately change any such password if you know or suspect that any unauthorised third party becomes aware of that password or if you become aware of unauthorised use of that password or there is any other breach of security known or suspected by you; we shall deem all access made using your password to have been made by or on behalf of you;
- 4.9.6 license and configure any third-party hardware and/or software necessary for you to access and use the Customer Platform;
- 4.9.7 be responsible for ensuring that you have the knowledge and expertise necessary to access and make use of the Customer Platform;
- 4.9.8 be responsible for ensuring that, and you hereby warrant and undertake to us that, your use of the Customer Platform and any of Your Media that you use in Your Profile:
- (a) does not infringe the privacy rights or Intellectual Property Rights of any third party;
- (b) does not harm us or bring us or our name into disrepute;
- (c) is not for the purposes of sending spam or other unsolicited emails;
- (d) is not for the purposes of breaching or circumventing the security of any network or Internet user;
- (e) does not impose an unreasonable or disproportionately large load on our infrastructure or the Platform;
- (f) does not interfere with another user's use of the Platform or similar services;
- (g) conforms in all respects will all applicable laws, rules, regulations, bye-laws and codes of practice (including disability discrimination, intellectual property, privacy and Data Protection Laws); and
- (h) does not contain any material detrimental to us or any other user of the Platform or similar services, including any viruses, trap doors, back doors, Trojan horses, time bombs, easter eggs, worms, cancelbots or other computer programming routines that are intended to detrimentally interfere with, damage, expropriate or surreptitiously intercept any system, data or personal information;
- 4.9.9 not access, store, distribute or transmit any material (including Your Media) during the course of your use of the Customer Platform that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) in a manner that is otherwise illegal or causes damage or injury to any person or property;
- and we reserve the right, without Liability (subject to Clause 11.2) or prejudice to our other rights and remedies whether under this Agreement or at law, to disable your access to any material that breaches the provisions of this Clause 4.9.9; and
- 4.9.10 be solely responsible for procuring and maintaining your network connections and telecommunications links from your systems to our data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the Internet.
- 4.10 You shall not:
- 4.10.1 except as may be required to be permitted by applicable law which is incapable of exclusion by agreement between the Parties:
- (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Platform in any form or media or by any means; or
- (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Platform; or
- 4.10.2 access all or any part of the Platform in order to build a product or service which competes with the Platform; or
- 4.10.3 use the Platform to provide services to third parties; or
- 4.10.4 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Platform available to any third party except to the extent permitted by this Agreement; or
- 4.10.5 attempt to obtain, or assist third parties in obtaining, access to the Platform other than as provided under this Agreement.
- 4.11 Except as expressly and specifically provided in this Agreement:
- 4.11.1 you assume sole responsibility for results obtained from the use of the Customer Platform by you, and for conclusions drawn from such use. We shall have no Liability (subject to Clause 11.2) for any damage caused by errors or omissions in any information, instructions or scripts provided to us by you in connection with the Platform, or any actions taken by us at your direction; and
- 4.11.2 the Customer Platform is provided to you on an "as is" basis.
- 5. Roles**
- 5.1 Through the Customer Platform, we will provide you with a profile which appears within GradTouch, on which you are able to list Roles ("**Your Profile**").
- 5.2 When posting a Role, you must follow the instructions on the Customer Platform as to how to post a Role and for making changes to the Role before you submit it to appear on GradTouch.
- 5.3 In order to post a Role, the following conditions shall apply:
- 5.3.1 the Role must be real and not materially different to the description that you provide in respect of that Role;

- 5.3.2 the Role must not relate to commercial activity revolving around sex, tarot, gambling, personal relationships or weapons;
 - 5.3.3 you must not provide duplicate Roles; we will consider Roles as duplicate when salary, location and position coincide;
 - 5.3.4 you must not include links within a Role description to run on a different website, mobile application or any platform other than GradTouch; and
 - 5.3.5 you must not post 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); if we consider that a Role may be discriminatory or illegal, we may require you to remove it.
- 5.4 A Graduate has various functionality available within GradTouch in respect of a Role, including applying for an interview, and contacting you directly through the Platform. You acknowledge that we do not guarantee any response to Roles posted by you through the Platform, or that the answers given by the Graduate are from a person qualified for the position advertised. You further acknowledge that we shall have no Liability (subject to Clause 15.2), in relation to the actions or omissions of any Graduate.
- 5.5 You acknowledge that it shall be your responsibility to satisfy yourself of the suitability of the Graduate for a Role, for evaluating any references provided by the Graduate, and for verifying that the Graduate has:
- 5.5.1 the required experience, training, qualifications, licences, and any authorisation which may be required by law or by any professional body;
 - 5.5.2 such other permission to work as may be required; and/or
 - 5.5.3 the relevant qualifications or permission required by the law of the country in which the Graduate is engaged to work.
- 5.6 You acknowledge that we are only a facilitator, and we shall have no Liability (subject to Clause 15.2), and you bear sole responsibility and Liability for the consequences of your use of the Customer Platform, the listing of Roles on GradTouch, and any contract you enter into with a Graduate.
- 5.7 You authorise us to act as your limited representative solely to list Roles on your behalf on GradTouch. You acknowledge that we are only a facilitator, and that we are not an employer or engager of any Graduate nor are we acting as an employment agency or employment business in connection with the Platform or at all. We provide a venue for you and Graduates to meet and discuss opportunities in accordance with the provisions of this Agreement.
- 5.8 We are not an agent of a Graduate or you and, subject to Clause 15.2, we shall not have any Liability for the Roles or the Graduate's suitability for such Roles. All contracts entered into by you with a Graduate are formed solely between you and the relevant Graduate, and the enforcement of any such contract is the responsibility of you and the relevant Graduate (being the parties to that contract), and, subject to Clause 15.2, we shall not have any Liability for the failure of either you or the relevant Graduate to fulfil such obligations.
- 5.9 You acknowledge that you are responsible for the contractual relationship between your and the Graduate once you enter into a contract with that Graduate.

6. Filming Day

- 6.1 In order to set up Your Profile and provide you with Standard Media, if set out in the Order, we may provide you with a Filming Day. We will provide any Filming Day in accordance with a Media Plan agreed between us and you from time to time in advance of the Filming Day.
- 6.2 We will:
- 6.2.1 use the Filming Day in order to take photographs and/or to create the Standard Media;
 - 6.2.2 ensure that we confirm the date of your Filming Day within two weeks of the Commencement Date, subject to your co-operation in making such arrangements;
 - 6.2.3 send you an information pack in relation to the Filming Day as far in advance of the Filming Day as is reasonably possible, which may contain suggestions about the content of Your Profile, the types of questions that should be asked in staff interviews, the variety of staff that should be interviewed, the location of the filming, a roll call (which you

should complete prior to the Filming Day) and a media production guide;

- 6.2.4 offer you a pre-Filming Day consultation on the telephone to give you advice on anything relating to the Filming Day that we are reasonably equipped to help you with;
 - 6.2.5 make preparations for the filming and production, including providing or engaging the crew and any other necessary facilities and services;
 - 6.2.6 attend your premises, or another agreed venue, for a maximum of eight hours on the Filming Day itself;
 - 6.2.7 create and produce the Standard Media and undertake and oversee any necessary post-production titling, editing, scoring, dubbing, cutting and completion of the Standard Media; and
 - 6.2.8 within five normal working days of the Filming Day, send you the Standard Media for your approval (which you will not unreasonably withhold). We will have final editorial control over the Standard Media but we will liaise with you regularly so that we can work together to try to ensure that both we and you will be happy to add the Standard Media to Your Profile.
- 6.3 In respect of the Filming Day, you will:
- 6.3.1 provide us with reasonable access to your premises or the agreed venue at no expense to us including the cost of space, heat, light, power;
 - 6.3.2 where necessary and agreed give us access to your staff and instruct them to assist and support us wherever possible, to comply with our reasonable requests in producing the Standard Media, and in particular to provide such information as we may request;
 - 6.3.3 provide access to digital information and company graphics for use in the Standard Media;
 - 6.3.4 inform all employees, agents and guests at your premises of the proposed filming and obtain relevant release forms signed by all such persons;
 - 6.3.5 ensure you have the full landowner's permission to film;
 - 6.3.6 prepare the people you choose to be filming subjects as per our advice from time to time, for example, by advising them about speaking slowly and clearly;
 - 6.3.7 prepare a suitable area for filming to take place ensuring that all necessary health and safety regulations are complied with. You will report any potential hazards to us immediately and you will inform all those who are to be involved in the Filming Day of such hazards in addition to any potential hazards of which we inform you prior to the Filming Day; and
 - 6.3.8 inform us of any relevant health and safety regulations, rules or policies that apply to your premises or the agreed venue.

We will not have any Liability, subject to subject to Clause 15.2, for any failure by you to comply with this Clause 6.3.

- 6.4 We will provide you with only one Filming Day unless there has been a serious failure by us to meet our obligations under Clause 6.2, or as otherwise set out in the Order. If such a serious failure occurs, we will make reasonable efforts to identify the problem and book a further Filming Day with you, for which we will have all of the same responsibilities as those under Clause 6.2, and you will have all of the same responsibilities as those under Clause 6.3.
- 6.5 If we substantially meet our obligations under Clause 6.2 but you are not happy with the Standard Media, we will offer you a further Filming Day for an additional cost, to which Clause 6.2 and Clause 6.3 will apply.
- 6.6 In the event that you wish to postpone or cancel the Filming Day, and you provide us notice less than five Business Days before the Filming Day, Clause 9.5 will apply. We will provide any replacement or postponed Filming Day only on the payment of additional Fees, calculated at the Rates.

7. Your Media

- 7.1 In respect of Your Media, you warrant as follows:
- 7.1.1 you will allow us to edit any of Your Media in order to ensure (at our discretion) that it is suitable to add to Your Profile, and you acknowledge that we have the right to decide which of Your Media will and will not be used in Your Profile;

- 7.1.2 you will maintain and update Your Media, including by auditing it on a regular basis (at least monthly) to ensure ongoing compliance with your obligations under this Agreement; 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 treat this as a material breach and to terminate this Agreement under Clause 16.3.1;
 - 7.1.3 it is correct, accurate, current and complete, and not misleading or otherwise deceptive;
 - 7.1.4 it does not contain any material which is defamatory of any person or is otherwise obscene, offensive, hateful or inflammatory;
 - 7.1.5 it does not promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
 - 7.1.6 it is not in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence;
 - 7.1.7 it does not promote any illegal activity.
 - 7.1.8 it does not threaten, abuse or invade another's privacy, or cause annoyance, inconvenience or needless anxiety, and is not likely to harass, upset, embarrass, alarm or annoy any other person;
 - 7.1.9 it is not used to impersonate any person, or to misrepresent your identity or affiliation with any person;
 - 7.1.10 you have all necessary rights, permissions and consents required to record and for us to publish Your Media and for us to include it in Your Profile;
 - 7.1.11 you have complied with all applicable laws, statutes, regulations and by-laws in relation to recording and distributing Your Media;
 - 7.1.12 it will not breach any contract or infringe or violate any copyright, trademark or any other personal or proprietary right of any person or render us liable to any claim or proceedings whatsoever;
 - 7.1.13 if it contains the name or pictorial representation (photographic or otherwise) of any living person and/or any part of any living person and/or any copy by which any living person is or can be identified, you have obtained the authority of such living person to make use of such name, representation and/or copy; and
 - 7.1.14 it complies with the British Code of Advertising Practice and all other relevant codes under the general supervision of the Advertising Standards Authority.
- Each of the above warranties applies to Your Media throughout the term of this Agreement.
- 7.2 Although we moderate Your Media and have the right to refuse to publish it in Your Profile, it is your responsibility to check the accuracy and content of Your Profile in relation to both Media
 - 7.3 We may reject, or require to be amended, Your Media or any part of it:
 - 7.3.1 to comply with legal or moral obligations placed on us or you; or
 - 7.3.2 to avoid infringing a third party's rights, the British Code of Advertising Practice and all other codes under the general supervision of the Advertising Standards Authority, laws relating to discrimination, employment or human rights or other laws; or
 - 7.3.3 where Your Media does not comply with our technical specifications.
 - 7.4 Subject to Clause 15.2, we will not have any Liability for:
 - 7.4.1 declining to publish Your Media for any reason; and/or
 - 7.4.2 any loss of original copy, artwork, or other materials, which you warrant that you have retained in sufficient quality and quantity for whatever purpose.
- 8. Your obligations**
- 8.1 You shall:
 - 8.1.1 ensure that the terms of the Order, and any specification or instructions you provide to us for the Services, are complete and accurate;

- 8.1.2 sign a confirmatory note upon any of the Services (in whole or in part) having taken place if we reasonably require you to do so;
 - 8.1.3 ensure that your employees, agents and subcontractors cooperate with, and make themselves available at all reasonable times for discussion and meetings with, us and our employees, agents and subcontractors and to enable us to promptly perform our obligations under this Agreement;
 - 8.1.4 promptly provide to us such data, information and assistance that will enable us to carry out fully, accurately and promptly our obligations under this Agreement to the best of our ability;
 - 8.1.5 have all rights, permissions and consents to enter into, and perform your obligations under, this Agreement; and
 - 8.1.6 comply with all applicable laws, statutes, regulations and bye-laws in relation to the exercise of your rights and performance of your obligations under this Agreement.
- 8.2 It is your responsibility to ensure that the Services are sufficient and suitable for your purposes and meet your individual requirements. This responsibility includes ensuring that the Services, and any deliverables or other materials we provide as part of the Services, are compliant with any regulatory regime to which you are subject. We shall not be responsible or, subject to Clause 15.2, have any Liability in the event that the Services are not suitable for your purposes or do not meet your individual requirements, including if they fail to comply with any laws or regulations to which you are subject.
 - 8.3 You are responsible for ensuring that you provide us with the information and assistance required to enable us to properly provide the Services. We shall not be responsible or, subject to Clause 15.2, have any Liability for any failure to provide the Services to the extent caused by your failure to properly ensure the provision of the relevant information and/or assistance, including as set out in Clause 8.1.
 - 8.4 You shall defend us, indemnify us and hold us harmless against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with any breach by you of Clause 3.2, 3.3, 4.9, 4.10, 5, 6.3, 7.1, 8.1, 8.2, 8.3 and/or 13.8.
- 9. Services**
- 9.1 We warrant that:
 - 9.1.1 we shall provide the Services with all due skill, care and diligence using appropriately experienced and qualified personnel; and
 - 9.1.2 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.
 - 9.2 We are not responsible for any people, equipment, deliverables or services that we are not expressly stipulated to provide in this Agreement. You are responsible for any people, equipment, deliverables and services that you need to obtain from someone other than us. Except for any matter in relation to which we specifically agree in writing to advise or do, we shall not be responsible, or have any Liability (subject to Clause 15.2) for advising on, or failing to advise on, or doing, or failing to do, anything else.
 - 9.3 Subject to us performing the Services within any timeframe agreed as being necessary for the performance of the Services, we may select our own working times and location provided that the nature of particular services does not require those particular services to be undertaken during particular working times or at a particular location (in which situation you shall be entitled to request that we perform the Services at such working times and location as are reasonable in the circumstances).
 - 9.4 We shall use our reasonable endeavours to perform our obligations under this Agreement within any timescales set out in this Agreement. However, subject to Clause 15.2, we shall not have any Liability for any delays or failures to accurately perform our obligations:
 - 9.4.1 if we have used those endeavours; or
 - 9.4.2 if caused by any failure or delay on your part or on the part of your employees, agents or subcontractors or by any breach by you of this Agreement or any other agreement.

If there is any slippage in time, we shall use our reasonable endeavours to reschedule delayed tasks to a mutually convenient time.

9.5 If we are delayed or hindered in providing any Services as a result of any breach, delay or failure by you to perform any of your obligations under this Agreement or of any other agreement between us and you, then we may charge you at the Rates for:

9.5.1 any time reasonably incurred as a result of the hindrance or breach (including any wasted time for which we had anticipated that our Personnel would provide Services under this Agreement but become unable to provide the Services at that time as a result of your act or omission); and

9.5.2 any time that we were going to spend in providing the Services, in addition to the time we actually do spend in providing the Services.

9.6 Except as specifically stipulated in this Agreement, we:

9.6.1 shall not be responsible for providing or achieving any particular results or outcomes or within a particular time; and

9.6.2 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.

10. Management of the Services

10.1 Each Party shall appoint a person for this Agreement to oversee the provision of Services by us to you, where such person shall act as the first point of contact for the other Party in respect of the relevant Services and this Agreement (each being a "Manager").

10.2 The relevant Manager of each Party shall cooperate with each other and shall attend meetings at reasonable intervals (and at least on a monthly basis) to discuss the provision of the relevant Services.

11. Fees

11.1 In consideration of obtaining the relevant Services we provide pursuant to this Agreement, you shall pay to us the Fees.

11.2 The Fees shall be as set out in the Order.

11.3 We may charge you for our reasonable expenses incurred in the course of performing our obligations under this Agreement, including for the reasonable accommodation, travel, telephone, food, subsistence, out-of-pocket, any other expenses incurred in the course of performing this Agreement outside of the relevant person's normal place of work, and materials or equipment agreed in writing between the Parties that we will purchase on your behalf. Such expenses shall not be considered to be included in any estimates or quotations we provide to you at any time, and shall be incurred and charged to you on an ad hoc basis.

11.4 You shall pay the Fees (and expenses) to us within 14 days of the date of the invoice.

11.5 We may issue invoices to you for the Fees (and expenses) at such intervals as we may, at our absolute discretion, consider appropriate.

11.6 All sums due under this Agreement are exclusive of VAT or other sales, import or export duties or taxes (if applicable) which shall be payable in addition at the same time as payment of any sums due.

11.7 You shall pay us all sums due 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.

11.8 Payment of sums due under this Agreement shall be in the currency in force in England from time to time.

11.9 All amounts due under this Agreement shall be paid by you to us in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

11.10 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:

11.10.1 charge interest 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;

11.10.2 recover our costs and expenses and charges (including legal and debt collection fees and costs) in collecting the late payment; and/or

11.10.3 suspend performance of this until payment in full has been made.

12. Confidentiality

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

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

12.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 12.

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.

12.2 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:

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

12.2.2 it does so subject to obligations equivalent to those set out in this Clause 12.

12.3 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 12.3, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.

12.4 The obligations of confidentiality in this Clause 12 shall not extend to any matter which either Party can show:

12.4.1 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

12.4.2 was independently developed by it; or

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

12.4.4 was in its written records prior to receipt.

12.5 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.

12.6 We may:

12.6.1 identify you as our customer and the type of Services provided by us to you;

12.6.2 use information relating to this Agreement and the Services in marketing and case studies with third parties, including reasonable use of your logo and other branding;

provided that, in doing so, we shall not reveal any of your Confidential Information (without your prior written consent).

12.7 On termination of this Agreement, each Party shall:

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

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

12.7.3 certify in writing to the other Party that it has complied with the requirements of this Clause 12.7, 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, or to otherwise maintain reasonable business records.

12.8 The provisions of this Clause 12 shall continue to apply after termination of this Agreement.

13. Intellectual Property Rights

- 13.1 You acknowledge that all Intellectual Property Rights in the Services, the Library Media and any Standard Media belong and shall belong to us or the relevant third-party owners (as the case may be), and you shall have no rights in or to the Services, Library Media or Standard Media other than the right to use them in accordance with the terms of this Agreement for the duration of the Term.
- 13.2 We shall defend you against any claim that your use of the Services in accordance with this Agreement infringes any third party's Intellectual Property Rights, and shall indemnify you for any amounts awarded against you in judgment or settlement of such claims, provided that:
- 13.2.1 we are given prompt notice of any such claim;
- 13.2.2 you make no admissions or settlements without our prior written consent;
- 13.2.3 you provide reasonable co-operation to us in the defence and settlement of such claim, at our expense; and
- 13.2.4 you give us complete control over any negotiations, litigation and the settlement of any claim or action.
- 13.3 In the defence or settlement of any claim under the indemnity in Clause 13.2, we may procure the right for you to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on two Business Days' notice to you.
- 13.4 In no event shall we, our employees, agents and/or sub-contractors have any Liability (subject to Clause 15.2) under Clause 13.2 to the extent that the alleged infringement is based on:
- 13.4.1 your negligence or breach of this Agreement;
- 13.4.2 a modification of the Services by anyone other than us; or
- 13.4.3 your use of the Services in a manner contrary to our instructions; or
- 13.4.4 your use of the Services after notice of the alleged or actual infringement from us or any appropriate authority.
- 13.5 Clause 13.2 to Clause 13.4 (inclusive) state your sole and exclusive rights and remedies, and our (including our employees', agents' and sub-contractors') entire obligations and Liability (subject to Clause 15.2), for infringement of Intellectual Property Rights.
- 13.6 We acknowledge that you shall own and retain all rights, title and interest in and to the Customer Data. We shall not have any rights to access, use or modify the Customer Data without your prior written consent, except to the extent necessary for you to access the Services or as otherwise required by applicable law.
- 13.7 The Intellectual Property Rights in the Bespoke Media shall, on payment of all relevant invoices in respect of such Bespoke Media, vest in you. We assign (by way of present and, where appropriate, future assignment) all such Intellectual Property Rights with full title guarantee to you.
- 13.8 You warrant that you either:
- 13.8.1 are sole legal and beneficial owner of, and own all the rights and interests in, Your Branding and Your Media; or
- 13.8.2 have in place a valid and subsisting licence to use the Your Branding and Your Media and to sublicense them to us under this Agreement.
- 13.9 You hereby grant to us a royalty-free, non-exclusive, non-assignable, sublicensable licence to use Your Branding and Your Media, or any variations of such:
- 13.9.1 on GradTouch;
- 13.9.2 in such of our marketing material, via any media, as we consider to be appropriate (at our absolute discretion) from time to time; and
- 13.9.3 to the extent necessary to fulfil our obligations under this Contract.
- 13.10 In the event that you would like to have the continued right to use Library Media and/or the Standard Media following expiry or termination of this Agreement for any reason, you may purchase a licence from us to allow such continued usage by you, at our commercial rates for the purchase of such licence then in force.
- 14. Data protection**
- 14.1 You shall own all right, title and interest in and to all of the Customer Data and are exclusively responsible for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 14.2 The Parties acknowledge that, for the purposes of Data Protection Laws, you are the Controller and we are the Processor of any Personal Data. The scope, nature and purpose of Processing is as set out in Order.
- 14.3 Each Party confirms that it holds, and during the term of this Agreement will maintain, all registrations and notifications required in terms of the Data Protection Laws which are appropriate to its performance of the obligations under this Agreement.
- 14.4 Each Party confirms that, in the performance of this Agreement, it will comply with Data Protection Laws.
- 14.5 We shall:
- 14.5.1 Process Personal Data only on documented instructions from you, unless required to do so by Data Protection Laws or any other applicable law to which we are subject; in such a case, we shall inform you of that legal requirement before Processing, unless that law prohibits us to so inform you;
- 14.5.2 ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- 14.5.3 take all measures required pursuant to Article 32 of the GDPR in respect of security of Processing;
- 14.5.4 not commission any subcontractor in respect of Processing Personal Data without your prior written consent (such consent not to be unreasonably withheld or delayed), and ensure that any such subcontractor we commission complies with the provisions of this Clause 14 as if it was a Party;
- 14.5.5 taking into account the nature of the Processing, assist you by putting in place appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of your obligation to respond to requests for exercising the Data Subject's rights laid down in Data Protection Laws, to the extent that such requests relate to this Agreement and our obligations under it;
- 14.5.6 assist you in ensuring compliance with your obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of Processing the Personal Data and the information available to us;
- 14.5.7 at your option, delete (to the extent practicable) or return all the Personal Data to you after termination of this Agreement or otherwise on your request, and delete existing copies (to the extent practicable) unless applicable law requires our ongoing storage of the Personal Data;
- 14.5.8 make available to you all information necessary to demonstrate our compliance with this Clause 14.5, and allow for and contribute to audits, including inspections, conducted by you or another auditor mandated by you; and
- 14.5.9 inform you immediately if, in our opinion, an instruction from you infringes (or, if acted upon, might cause the infringement of) Data Protection Laws. Subject to Clause 15.2, we shall not have any Liability in respect of any instruction from you that breaches (or causes a breach of) Data Protection Laws to the extent that we could not reasonably have been aware, or could not reasonably be expected to have been aware, that such instruction would breach (or cause a breach of) Data Protection Laws.
- 14.6 Each Party will notify the other Party as soon as is reasonably practicable if it becomes aware of a Personal Data Breach relating to either Party's obligations under this Agreement.
- 14.7 You shall undertake appropriate data protection impact assessments to ensure that Processing of Personal Data complies with Data Protection Laws. We will provide you with reasonable assistance, where necessary and upon your request, in carrying out any data protection impact assessment and undertaking any necessary prior consultation of the Supervisory Authority.
- 14.8 It is your responsibility to ensure that Personal Data is dealt with in a way that is compliant with Article 5(1) of the GDPR.
- 14.9 You shall ensure that:
- 14.9.1 you are able to justify the Processing of Personal Data in accordance with Article 6(1) of the GDPR (including, where applicable, obtaining any and all consents of Data Subjects required in order to commence the Processing), and that you have recorded or documented this in accordance with the record keeping requirements of the GDPR;

- 14.9.2 where Personal Data falls within the Special Categories of Personal Data, Article 9(2) of the GDPR applies to that Personal Data before Processing takes place;
- 14.9.3 where Article 9(2) of the GDPR does not apply to any Personal Data falling within the Special Categories of Personal Data, no such Personal Data will be sent to us; and
- 14.9.4 you have all necessary appropriate consents and notices in place to enable the lawful transfer of the Personal Data to us for the Term for the purposes of this Agreement.
- 14.10 In the event that we:
- 14.10.1 comply with your instructions in respect of Processing, we shall not have any Liability (subject to Clause 15.2) for any damage caused by Processing that Personal Data, or for any consequences in the event that such Processing otherwise infringes Data Protection Laws, to the extent that such damage or consequences result from our compliance with such instructions; and/or
- 14.10.2 refuse to comply with your instructions in respect of Processing due to concerns that compliance will cause a breach of Data Protection Laws, we shall not have any Liability (subject to Clause 15.2) for any failure to follow such instructions.
- 14.11 Each Party agrees to indemnify, and keep indemnified and defend at its own expense, the other Party, against all costs, claims, damages or expenses incurred by the other Party or for which the other Party may become liable, due to any failure by the first Party or its employees or agents to comply with this Clause 14.
- 15. Limitation of Liability**
- 15.1 This Clause 15 prevails over all of this Agreement and sets forth our entire Liability, and your sole and exclusive remedies, in respect of:
- 15.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of this Agreement or any services or deliverables in connection with this Agreement; or
- 15.1.2 otherwise in relation to this Agreement or entering into this Agreement.
- 15.2 Neither Party excludes or limits its Liability for:
- 15.2.1 its fraud; or
- 15.2.2 death or personal injury caused by its Breach of Duty; or
- 15.2.3 any breach of the obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or
- 15.2.4 any other Liability which cannot be excluded or limited by applicable law.
- 15.3 Subject to Clause 15.2, we do not accept and hereby exclude any Liability for Breach of Duty other than any Liability arising pursuant to the terms of this Agreement.
- 15.4 Subject to Clause 15.2, we shall not have any Liability in respect of any:
- 15.4.1 indirect or consequential losses, damages, costs or expenses;
- 15.4.2 loss of actual or anticipated profits;
- 15.4.3 loss of contracts;
- 15.4.4 loss of use of money;
- 15.4.5 loss of anticipated savings;
- 15.4.6 loss of revenue;
- 15.4.7 loss of goodwill;
- 15.4.8 loss of reputation;
- 15.4.9 loss of business;
- 15.4.10 ex gratia payments;
- 15.4.11 loss of operation time;
- 15.4.12 loss of opportunity;
- 15.4.13 loss caused by the diminution in value of any asset; or
- 15.4.14 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 15.4.2 to 15.4.14 (inclusive) apply whether such losses are direct, indirect, consequential or otherwise.
- 15.5 Subject to Clause 15.2, 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 110% 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.
- 15.6 The limitation of Liability under Clause 15.5 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.
- 15.7 You acknowledge and accept that we only provide the Services to you on the express condition that we will not be responsible for, nor shall we have any Liability (subject to Clause 15.2), directly or indirectly, for any act or omission of, you or your employees, agents or subcontractors, or any third party.
- 15.8 Nothing in this Agreement shall restrict or limit either Party's general obligation at law to mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under this Agreement.
- 16. Termination**
- 16.1 This Agreement shall commence on the Commencement Date and, unless terminated earlier in accordance with the termination provisions under this Agreement, shall continue in full force and effect 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. Either Party may give written notice to the other Party, not later than three months before the end of the Initial Term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be. Not less than four months before the end of the Initial Term and any Extended Term, we will notify you of the Fees that will apply to the Services in the coming Extended Term; if you do not wish this Agreement to renew automatically, you have the right to terminate this Agreement on three months' notice in accordance with this Clause 16.1.
- 16.2 Without prejudice to any of our rights or remedies, we may terminate this Agreement with immediate effect (or such other notice period as we see fit in 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.
- 16.3 By notice in writing to the other Party, either Party may immediately terminate this Agreement:
- 16.3.1 if (without prejudice to Clause 16.2) 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 20 Business Days of being notified of such breach by the Party; and/or
- 16.3.2 if 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 or 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.
- 16.4 Termination or expiry of this Agreement shall be without prejudice to any accrued rights or remedies of either Party.
- 16.5 On termination or expiry of this Agreement for any reason:
- 16.5.1 we shall cease to provide the Services under this Agreement; and
- 16.5.2 you shall pay to us all amounts owing to us under this Agreement, whether invoiced or not.

16.6 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

17. Force Majeure

17.1 Subject to Clause 15.2, 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 detainments 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.

17.2 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.

17.3 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.

17.4 Each Party shall bear its own costs incurred by the Event of Force Majeure.

17.5 If the performance of any obligations is delayed under Clause 17, each Party shall nevertheless accept performance as and when the other shall be able to perform.

17.6 If the breach, hindrance or delay caused by the Event of Force Majeure as set out in Clause 17.1 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 15.2) to the other Party by reason of such termination.

17.7 If we have contracted to provide identical or similar services to more than one customer and we are prevented from fully 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.

18. Notices

18.1 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 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, commercial courier or email (provided that a confirmatory copy is given by hand or sent by pre-paid first-class post, recorded delivery or commercial courier in accordance with this Clause 18.1 within one Business Day of transmission).

18.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 18.1; 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 by email, at the time at which that email has been sent (with confirmation of sending being conclusive evidence of proof that a notice was sent by email).

18.3 The provisions of this Clause 18 shall not apply to the service of any proceedings or other documents in any legal action.

19. Assignment

Neither Party may 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 its obligations under it, without the prior written

consent of the other Party (such consent not to be unreasonably withheld or delayed).

20. Severance

20.1 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.

20.2 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.

21. Waiver and remedies

21.1 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.

21.2 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

22. Third party rights

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

23. Change Control

23.1 In the event that we or you need to change this Agreement, you may at any time request, and we may at any time recommend, such Change only in accordance with this Clause 23.

23.2 Until such time as a Change is made in accordance with this Clause 23, we and you shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms prior to such Change.

23.3 Any discussions which may take place between us and you in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either Party.

23.4 Discussion between us and you concerning a Change shall result in any one of the following:

23.4.1 no further action being taken; or

23.4.2 a request to change this Agreement by you; or

23.4.3 a recommendation to change this Agreement by us.

23.5 Where we receive a written request for a Change from you, we shall, unless otherwise agreed between us and you, submit a draft Change Control Note to you within three weeks of the date of the request.

23.6 A recommendation of a Change by us shall be submitted by us directly to you in the form of a draft Change Control Note. You shall give your response to the draft Change Control Note within three weeks of receipt.

23.7 A "Change Control Note" means the written record of a Change agreed or to be agreed by us and you, a template of which is annexed to these Terms and Conditions, and shall contain:

23.7.1 the title of the Change;

23.7.2 the originator and date of the request or recommendation for the Change;

23.7.3 the reason for the Change;

23.7.4 full details of the Change, including any specifications;

23.7.5 the impact on Fees, if any, of the Change;

23.7.6 a timetable for implementation, together with any proposals for acceptance of the Change;

23.7.7 a schedule of payments if appropriate;

23.7.8 details of the likely impact, if any, of the Change on other aspects of this Agreement including:

(a) the timetable for the provision of the Change;

- (b) the personnel to be provided;
 - (c) the Fees; and
 - (d) other contractual issues;
- 23.7.9 the date of expiry of validity of the Change Control Note; and
- 23.7.10 provision for signature by us and you.
- 23.8 For each Change Control Note submitted to you by us, you will, within the period of the validity of the Change Control Note:
- 23.8.1 allocate a sequential number to the Change Control Note; and
- 23.8.2 evaluate the Change Control Note and, as appropriate:
- (a) request further information; or
 - (b) arrange for two copies of the Change Control Note to be signed by or on behalf of you and return one of the copies to us; or
 - (c) notify us of the rejection of the Change Control Note.
- 23.9 A Change Control Note signed by us and you shall constitute an amendment to this Agreement.
- 24. No partnership**
- Nothing in this Agreement shall constitute a partnership or employment or agency relationship between the Parties.
- 25. Dispute resolution**
- 25.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("**Dispute**") then the Parties shall follow the procedure set out in this Clause 25:
- 25.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, such contacts at each Party as are set out in the Order Form shall attempt, acting reasonably and in good faith, to resolve the Dispute;

- 25.1.2 if those persons set out in Clause 25.1.1 are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to such senior contacts at each Party as are set out in the Order Form who shall attempt, acting reasonably and in good faith, to resolve it; and
- 25.1.3 if those persons set out in Clause 25.1.2 are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing ("**ADR notice**") to the other Party requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 Days after the date of the ADR notice.
- 25.2 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute under Clause 26, which shall apply at all times.
- 25.3 If the Dispute is not resolved within 60 days after service of the ADR notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the said period of 60 days, or the mediation terminates before the expiration of the said period of 60 days, the Dispute shall be finally resolved by the courts of England in accordance with Clause 26.
- 26. Governing law and jurisdiction**
- 26.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.
- 26.2 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 or formation.