

MASTER SERVICES AGREEMENT

This master services agreement (“**Agreement**”) governs the Services purchased under the applicable Order and/or SOW between Supplier and Customer (each a “**party**” and collectively the “**parties**”).

AGREED TERMS

1. DEFINITIONS

- 1.1 **Affiliate(s)** means any third party that controls, is controlled by, or is under common control with the applicable party. As used herein, “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of said party, whether through ownership of voting securities, by contract or otherwise.
- 1.2 **AI** means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.
- 1.3 **AI Services** means the features and functionality within the Subscription Services that include or are powered by AI.
- 1.4 **Applicable Law(s)** means worldwide laws and regulations in force from time to time that are applicable to each party in its performance of its obligations under the Agreement.
- 1.5 **Beta Service(s)** means a version or feature of the Services that Supplier has not made generally available for production use, is in its early development, or is otherwise identified as such by Supplier, including but not limited to Beamery Labs.
- 1.6 **Confidential Information** means any information (regardless of its form), which is designated by a party, its Affiliates or Sub-Processors, as being confidential (whether or not it is marked) or which can reasonably be expected to be confidential, that the other party obtains in connection with this Agreement, including but not limited to: Customer Data; Documentation; pricing; the terms and conditions of this Agreement; technical information or know-how; recordings of the Services; trade or business secrets; and commercial information.
- 1.7 **Contact** means a single candidate, prospect, lead, or other individual (other than an User) whose information and Personal Data is submitted to the Subscription Services.
- 1.8 **Customer** means the customer entity (as identified in the Order) purchasing the Services.
- 1.9 **Customer Data** means the data provided by Customer for the purpose of Customer’s use of the Services including Contact information, text, graphics, information, documentation, content, notes, images, data, and other materials.
- 1.10 **Data Protection Law(s)** means worldwide data protection and privacy laws and regulations in force from time to time, and the guidance and codes of practice issued by the relevant data protection or supervisory authority, that are applicable to a party in its use or provision of the Services and Personal Data, including, where applicable and in each case as may be amended or superseded from time to time Regulation (EU) 2016/679 (General Data Protection Regulation “GDPR”), UK GDPR and US equivalents.
- 1.11 **Documentation** means the applicable Order, SOW, and training materials provided to Customer by Supplier.
- 1.12 **DPA** means the Data Processing Agreement <https://beamery.com/legal>.
- 1.13 **Fees** mean the fees payable by Customer to Supplier agreed between the parties in applicable Order or SOW.
- 1.14 **Force Majeure** means any cause preventing a party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including, without limitation, act of God, war, riot, computer viruses and malware, epidemics, pandemics, compliance with any law or governmental order, rule, regulation or direction, flood or storm, except for strike or lockout of the party’s own staff shall not entitle them to claim that to be a force majeure event.
- 1.15 **Intellectual Property Rights** means all tangible and intangible rights associated with works of authorship throughout the world, including, but not limited to, copyrights, moral rights, and mask works; trademarks and trade name rights and similar rights; trade secret rights; patents, designs, algorithms, and other intellectual or industrial property rights (of every kind and nature) whether registered, registerable or otherwise arising by operation of law, contract, license, or otherwise; and all registrations, initial applications, renewals, extensions, continuations, divisions, or reissues now or hereafter in force (including any rights in the foregoing).
- 1.16 **Order** means an order form document entered into between Supplier and Customer or their Affiliates for Supplier’s Services.
- 1.17 **Professional Services** means implementation, integration, consulting, advising, and/or training services set out in an Order or SOW.
- 1.18 **Restricted Information** means payment card information; financial information (or similar data regulated by GLBA or equivalent legislation); social security numbers; passport numbers; driving license numbers; insurance information; physical or mental health information or medical conditions (or similar data regulated by HIPAA or equivalent legislation); political opinions; religious or philosophical beliefs; trade union membership; genetic data; biometric data; sex life; criminal information and/or background checks; or information of children. Restricted Information does not include voluntarily-given self-identification data such as gender, sexual orientation, racial or ethnic data.
- 1.19 **Security Policies** means Supplier’s documentation with regards to information security and data privacy at <https://trust.beamery.com/> as amended from time to time. Supplier shall not materially diminish the technical and organizational measures set out in its Security Policies.

- 1.20 **Services** means, collectively (as applicable), the Subscription Services and Professional Services.
- 1.21 **SLA** means the “service level agreement (SLA)” at <https://beamery.com/legal>, as amended from time to time. Supplier shall not materially diminish the service levels set out in the SLA.
- 1.22 **Statement of Work/SOW** means an order for Professional Services entered into by Supplier and Customer or their Affiliates.
- 1.23 **Sub-Processor(s)** means Supplier’s sub-processors set out under “Sub-Processors” at <https://beamery.com/legal>, as updated from time to time. Changes in the Sub-Processors shall be made in accordance with the DPA.
- 1.24 **Supplier** means the applicable Beamery entity identified in the Order.
- 1.25 **Subscription Services** means Supplier’s software as a service tools and platform(s), any ancillary products and services, including website hosting and support services, that are set out in the applicable Order.
- 1.26 **Third Party Services** means any applications, products, applicant tracking systems, links, and services not provided by Supplier that are used by Customer in conjunction (for example, via integration) with the Services. For clarity, Third Party Services do not include any services provided by Supplier’s Sub-Processors.
- 1.27 **Updates** means adding to, removing, or replacing existing features, functionality, integrations, or models from time to time that (in Supplier’s reasonable determination) are improved, redundant, have been merged with other functionality/features, or have been superseded.
- 1.28 **User(s)** means the nominated personnel of Customer, its Affiliates or its partners who are issued with a unique live login to the Subscription Services.
- 1.29 **WA Data** means work architecture data, skills, job descriptions, hierarchy, and relationships between roles that are provided or generated by Supplier as part of its Work Architecture Services.

2. SUPPLY OF SERVICES

- 2.1 **Subscription Services.** Supplier shall provide Customer with access to the Subscription Services during the Term to use for its own internal business purposes only. Supplier may make Updates to the Services from time to time.
- 2.2 **Support and Service Levels.** Supplier shall provide support for the Subscription Services in accordance with the SLA.
- 2.3 **Professional Services.** Where set out in an applicable Order or SOW, Supplier will provide implementation, integration and training services relevant to Supplier’s product and will not be doing any custom software development for Customer. Any request to change the scope of the Professional Services shall be set out in a change order signed between the parties. Supplier shall not be responsible for any delay in providing the Professional Services that is caused (in whole or in part) by an act or omission of Customer, its Affiliates, Users, or third parties.
- 2.4 **Beta Services.** Supplier may offer Customer the option to use Beta Services from time to time. Beta Services: (a) are provided AS IS with no warranty, indemnity, or liability; (b) are not subject to the SLA; and (c) may be subject to additional terms (as provided by Supplier). Supplier may modify or discontinue the provision of the Beta Services to Customer at any time in Supplier’s sole discretion and without any liability to Customer.
- 2.5 **Third Party Services.** Customer may elect to use the Services in conjunction with Third Party Services. Customer acknowledges that its use of such Third Party Services is subject to the applicable third party’s terms and conditions and Supplier makes no representations or warranties in relation to such Third Party Services, including but not limited to their availability.
- 2.6 **Artificial Intelligence.**
 - a) **AI Services.** Customer acknowledges and agrees that Supplier may use AI to enhance, support and/or deliver all or part of the Services (including but not limited to the creation of the WA Data). Customer further acknowledges that Supplier may provide Customer with access to features which may include (without limitation):
 - i) AI Services that use large language models and generative AI functionality (“**Generative AI Services**”). This may include Users providing prompts, instructions, and Customer Data to the AI Services (“**Prompt(s)**”) and receiving a response/content from the AI Services (“**Response(s)**”).
 - ii) AI Services that Customer can use to autonomously or semi-autonomously complete and repeat actions and/or tasks within the Subscription Services (“**Agentic AI Services**”). This may include Users using Prompts to instruct the AI Services to complete and repeat actions and/or tasks within the Subscription Services.
 - b) **Responsible AI.** Supplier will comply with all AI laws applicable to a developer/provider in its development and provision of the AI Services. Supplier will commission an independent third party to conduct an annual bias audit for certain protected characteristics/classes on applicable AI Services. Upon request, Supplier will share the final bias audit report with Customer. Customer acknowledges that such audits are done for illustrative purposes using test data, so Supplier makes no warranty that the results are fit for any particular use by Customer.
 - c) **Customer’s Use of AI.** Customer acknowledges and agrees that it retains ultimate control and responsibility over its use and configuration of the AI Services and any output therefrom, including but not limited to maintaining necessary human oversight and not relying on any output or assertions without independently factchecking them.

3. SUPPLIER WARRANTIES

- 3.1 **Performance Warranty.** Supplier warrants that it shall perform the: (a) Services in accordance with the Documentation; and (b) Professional Services with due care, skill and ability in accordance with recognized industry standard practices. If the Services do not conform to the performance warranty in this Section 3.1 Supplier will, at its expense, correct any such non-

conformance, or provide Customer with an alternative means of accomplishing the performance. If Supplier cannot correct or substitute such non-conformance within a commercially reasonable timeframe, either party may terminate the non-conforming Services and Supplier shall issue a pro-rata refund to the Customer for such non-conforming Services. Such correction, substitution, or termination with a pro-rata refund constitutes Customer's sole and exclusive remedy in connection with any non-conformance with this performance warranty. Supplier shall not be responsible or liable for any non-conformance to the extent that such arises due to the use of the Services by or on behalf of Customer contrary to this Agreement, Documentation, Supplier's express instructions, or any modification of the Services by or on behalf of Customer.

3.2 **Legal Warranty.** Supplier warrants that it shall comply with all Applicable Laws in its performance of the Services.

3.3 **Viruses.** Supplier will use industry-standard measures to avoid introducing viruses into the Subscription Services.

3.4 **DISCLAIMER.** EXCEPT AS STATED IN THIS AGREEMENT, SUPPLIER MAKES NO WARRANTY WITH RESPECT TO THE SERVICES (INCLUDING THE WA DATA AND RESPONSES), AND DISCLAIMS ALL STATUTORY OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR CUSTOMERS' BUSINESS REQUIREMENTS. SUPPLIER DOES NOT WARRANT THAT THE SERVICES ARE ERROR-FREE, ACCURATE, UNINTERRUPTED, OR CONTINUOUS, OR THAT IT IS COMPATIBLE WITH CUSTOMER'S SYSTEMS (OTHER THAN AS SPECIFIED IN THE DOCUMENTATION). SUPPLIER SHALL HAVE NO LIABILITY FOR ANY LOSS, OR DAMAGE THAT IS CAUSED BY ERRORS OR OMISSIONS IN ANY INFORMATION, DATA, INSTRUCTIONS, OR SCRIPTS PROVIDED TO SUPPLIER BY CUSTOMER, OR ANY ACTIONS TAKEN BY SUPPLIER AT CUSTOMER'S DIRECTION. CUSTOMER ACKNOWLEDGES AND AGREES THAT SUPPLIER IS NOT AN AGENT AND THAT SUPPLIER IS NOT CONDUCTING EMPLOYMENT FUNCTIONS ON BEHALF OF CUSTOMER; CUSTOMER SOLELY MAKES THE DECISION ON WHO TO HIRE AND IS SOLELY RESPONSIBLE FOR KEEPING ALL RECORDS IN RELATION TO ITS DECISION-MAKING. SUPPLIER DOES NOT SUPPLANT CUSTOMER'S MANAGEMENT OR OTHER DECISION-MAKING BODIES AND DOES NOT GUARANTEE RESULTS; CUSTOMER REMAINS SOLELY RESPONSIBLE FOR ITS DECISIONS, ACTIONS, USE OF THE SERVICES, INCLUDING (WITHOUT LIMITATION) ANY RECOMMENDATIONS, SUMMARIES AND INSIGHTS MADE BY AI AND ANY EMPLOYMENT OR WORKFORCE DECISIONS.

4. CUSTOMER OBLIGATIONS

4.1 **Users and Limits.** Customer shall use the Subscription Services in accordance with the limits in the applicable Order and Supplier's "fair use policy" (available at <https://beamery.com/legal>). Customer shall promptly notify Supplier if it becomes aware that it is over its limits or if any User's login details have been shared, compromised, or subject to unauthorized disclosure. If Users have shared login details with another person or Customer is otherwise over its limits, then without prejudice to Supplier's other rights, Customer shall pay to Supplier an amount equal to the Fees that would have been payable for the additional limits. Customer is responsible for the acts and omissions of its Users.

4.2 **Prohibited and Unauthorized Use.** Customer shall not:

- (a) use the Service to collect, manage or process Restricted Information;
- (b) use the Services to email purchased lists without proper consent from the recipient or other lawful basis;
- (c) attempt to gain unauthorized access to the Services;
- (d) use the Services in a way that threatens the security, integrity, or availability of the Services, including but not limited to uploading content or files that contains viruses, malware, or malicious code and sending spam emails;
- (e) directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover or disclose to any third party the source code, object code, underlying structure, ideas, know-how or algorithms relevant to the Services;
- (f) sell, license, or otherwise make available the Services (or any part thereof) or Documentation to any third party;
- (g) use the Services as part of any automated decision-making process or without taking into account other factors beyond the Services' recommendations when making final decisions; and
- (h) use the Services in any manner that facilitates or generates content that promotes discrimination, violence, or is otherwise harmful.

4.3 **Legal Warranty.** Customer shall use the Services in compliance with all Applicable Laws. Customer acknowledges that the Subscription Services include functionality to enable Customer's compliance with certain laws (for example data protection), however Customer is responsible for using such functionality in compliance with Applicable Laws.

4.4 **Suspension for Unauthorized Use.** Supplier may suspend, in its reasonable discretion, any user's access to the Services, for breach of [Sections 4.2](#) or [4.3](#). Supplier will notify Customer of such suspension as soon as practicably possible. Any suspension shall be as limited in scope and duration as is reasonably possible.

5. FEES & PAYMENT

5.1 **Fees.** Fees are set out in the applicable Order or SOW. Fees for the purchased Subscription Services will remain fixed for the term of the applicable Order. Unless otherwise stated, all Fees are non-refundable.

5.2 **Invoicing.** Unless otherwise set out in an Order or SOW, Supplier will invoice Customer for the Fees on or around the effective date of the applicable Order or SOW, and annually thereafter with respect to the Subscription Services. Customer shall pay all undisputed invoices (without deduction or set off) within thirty (30) days from the "Invoice Date" set out in Supplier's invoice. Supplier does not accept checks. Customer shall provide Supplier with all information required to correctly submit an invoice to Customer, including but not limited to the PO number and instructions for use of Customer's electronic invoicing

system, within five days of the effective date of the applicable Order or SOW to billing@beamery.com. Supplier reserves the right to suspend access or not begin providing the Services until a PO has been sent to billing@beamery.com.

- 5.3 **Non-Payment.** Supplier will not exercise its rights under this [Section 5.3](#) if the Fees are under reasonable and good-faith dispute and Customer is cooperating diligently to resolve the dispute. If Supplier has not received payment by the due date, it shall promptly notify Customer. If such payment remains outstanding ten (10) days after such notice, without prejudice to any of its other rights and remedies, Supplier may: (a) without liability to Customer, suspend all Services while the invoice(s) remain unpaid; and (b) charge Customer interest at the rate of one percent per month on any overdue sums from the due date until the date Supplier's receives payment by Customer (inclusive). Customer shall reimburse Supplier for all reasonable costs and expenses (including reasonable lawyers' fees) incurred by Supplier in collecting any overdue amounts.
- 5.4 **Taxes.** All Fees are exclusive of any taxes, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction (collectively, "**Taxes**"). Customer agrees to pay any Taxes applicable to the Services purchased by it during the Term. Customer shall have no liability for any Taxes based upon Supplier's (or its Affiliates') gross revenues or net income. Customer shall inform Supplier which state(s) it should charge sales tax in. If Customer is Tax exempt or pays Taxes directly, then prior to invoicing, Customer will provide Supplier with a copy of a current tax exemption certificate issued by the appropriate state taxing authority for the given jurisdiction. Should Customer be required by any regulation to make any deduction on account of tax, including but not limited to withholding tax, or otherwise on any sum payable under the Agreement, the Fees payable shall be increased by the amount of such tax to ensure that Supplier receives a sum equal to the amount to be paid under the applicable Order.
- 5.5 **Expenses.** Supplier's travel-related expenses will be reimbursed by Customer provided that such have been approved in writing (email sufficient) by Customer.

6. TERM & TERMINATION

- 6.1 **Term.** This Agreement shall govern all Orders and SOWs and shall continue until the earlier of expiry of all Orders and SOWs or termination in accordance with this Agreement ("**Term**").
- 6.2 **Termination for Cause.** Without affecting any right or remedy available to it, a party may terminate this Agreement and the applicable Order or SOW, by giving written notice of such termination to the other party:
- a) in the case of Supplier, if Customer fails to pay any invoice in accordance with this Agreement and remains in default for thirty (30) days after being notified in writing to make such payment;
 - b) if the other party commits a material breach of any term of this Agreement, Order, or SOW (as applicable to the breach) and fails to remedy that breach within a period of thirty (30) days after being notified (with a reasonably detailed explanation of the breach) in writing to do so; or
 - c) immediately upon the occurrence of the other party having a receiver, administrative receiver or an administrator appointed, passing a resolution for winding up or a court of competent jurisdiction making an order to that effect, becoming subject to an administration order, entering a voluntary arrangement with its creditors or any equivalent to the foregoing occurring under national or local law, except where for the purposes of a solvent and bona fide amalgamation or reorganization.
- 6.3 **Effect of Termination.** Upon termination or expiration of the Term:
- a) all rights granted hereunder to use the Services shall terminate immediately;
 - b) Customer shall promptly pay any Fees, taxes, or other amounts due or outstanding for the remainder of the Term; and
 - c) in the case of termination by Customer for cause under Section 6.2(b) Supplier will issue a pro-rata refund to Customer of any Fees paid in advance for any Professional Services not performed under a SOW or any Subscription Services for the remainder of the Term.
- 6.4 **Retrieval & Deletion of Customer Data.** Customer may export applicable Customer Data in Supplier's standard format (currently .csv) at any time during the Term. Unless otherwise agreed with Customer or legally prohibited, Supplier will, delete in accordance with industry standards, all Customer Data in its production environment within thirty (30) days of termination or expiration of this Agreement and all backups ninety (90) days thereafter. Upon request, Supplier will provide a copy of the Customer Data at the end of the Term in Supplier's standard format (currently .csv). Supplier will retain application logs data for 12 months from creation for security purposes.

7. PROPRIETARY RIGHTS

- 7.1 **Customer's Proprietary Rights.** Customer remains the sole owner of all Intellectual Property Rights in Customer Data. Customer warrants that Supplier's use of Customer Data in connection with this Agreement shall not cause Supplier to infringe any Applicable Laws or third-party Intellectual Property Rights.
- 7.2 **Supplier's Proprietary Rights.** This is an Agreement for access to and use of the Services as set out herein. Supplier and its licensors remain the sole owner of all Intellectual Property Rights and other right, title, and interest in the Documentation, Supplier's trademarks and service marks, the Services, and any related software. Except as expressly stated in this Agreement, Supplier does not grant Customer any Intellectual Property Rights under this Agreement.

- 7.3 **Prompts, Responses & WA Data.** Customer shall ensure any Prompts it provides to Supplier will not cause infringement of third-party rights. Supplier shall own the intellectual property rights (if any) in the Responses and WA Data (excluding any Customer Data therein), provided that Supplier shall provide Customer with non-exclusive, nontransferable, non-sublicensable, worldwide, royalty-free license to use the Responses and WA Data in order to use the Services and for its own internal business purposes only. Customer acknowledges that due to the nature of machine learning and the technology powering AI Services the Prompts, Responses, and WA Data may not be unique, the same or similar Prompts, Responses, and WA Data may be provided to Supplier's other customers, and Supplier makes no warranties and provides no indemnities in relation to the Prompts, Responses and WA Data's non-infringement of third-party rights.
- 7.4 **Feedback.** Customer may provide feedback regarding any part of the Services, products, business or development plans, or technology roadmaps ("**Feedback**") and Supplier may collect data from Customer's use of the Services, including but not limited to from reviewing Prompts, Responses, and WA Data logs, and residual knowledge ("**Learnings**"). Supplier may use such Feedback and Learnings for lawful business purposes, including but not limited to understanding, improving, and developing the Services, artificial intelligence learning, benchmarking, and analytics. However, Supplier will not use or disclose the Feedback or Learnings externally unless it is aggregated or de-identified.

8. CONFIDENTIALITY

- 8.1 **Confidentiality Undertaking.** Each party shall (a) not use the other party's Confidential Information other than as required for the performance of its obligations or as permitted under this Agreement; (b) not disclose the other party's Confidential Information to any third party (except its Affiliates, Sub-Processors, professional advisors or as required by Applicable Law) without the prior written consent of the other party; and (c) use reasonable efforts (not less than it uses to protect its own confidential information) to prevent the unauthorized disclosure of the other party's Confidential Information. Notwithstanding the foregoing, Customer permits Supplier to disclose, under obligations of confidentiality no less onerous than those set out herein, that Customer is a customer of Supplier to actual or potential clients, partners, and investors.
- 8.2 **Exceptions.** Confidential Information shall not include any information which: (a) is or becomes publicly known other than through any act or omission of the receiving party; (b) was in the other party's lawful possession before the disclosure; (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (d) was or is independently developed by the receiving party without reference to the Confidential Information of the other party.
- 8.3 **Required Disclosure.** If a receiving party is required to disclose Confidential Information of the other party under applicable law, court order or other governmental authority lawfully demanding the Confidential Information, the receiving party shall: (a) to the extent legally permissible, give to the disclosing party prompt written notice of the request and a reasonable opportunity to object to the disclosure and to seek a protective order or other appropriate remedy; (b) use reasonable efforts to limit disclosure; (c) disclose only the Confidential Information specifically required and only to the extent compelled to do so; and (d) continue to maintain confidentiality after the required disclosure.

9. DATA & SECURITY

- 9.1 **Data Protection.** Both parties shall comply with their obligations under Data Protection Law and in the DPA.
- 9.2 **Security.** Supplier will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Customer Data, as further described at the Security Policy and Annex 2 of the DPA. Those safeguards will include, but will not be limited to, measures designed to protect against the unauthorized access to or disclosure of Customer Data in accordance with ISO 27001 and SOC2 Type 2.
- 9.3 **Customer Data Protection.** Customer acknowledges that it is the Controller of the Customer Data and as such Customer warrants that it shall use the Services in compliance with all applicable Data Protection Laws and that it has all necessary consents (or other lawful basis) to transfer the Customer Data to Supplier. Customer will defend and indemnify Supplier and its Affiliates (and their respective employees, directors, and representatives) from all claims or demands by a third party, including all damages, liabilities, costs, reasonable attorneys' fees, and fines imposed by legal or regulatory bodies, to the extent resulting from, alleged to have resulted from or in connection with any violation by Customer or its Affiliates of any applicable Data Protection Law or applicable employee hiring laws.

10. INDEMNIFICATION

- 10.1 **Supplier Indemnification.** Supplier shall defend Customer and its Affiliates and their respective employees, directors, and representatives ("**Customer Indemnities**") against any third-party claim or action brought against Customer Indemnities to the extent that such claim directly arises from an allegation that the Customer's use of the Services (or any part thereof) as authorized under this Agreement infringes the Intellectual Property Rights of a third party ("**IP Claim**"). Supplier shall indemnify and hold harmless Customer Indemnities from and against any damages and costs (including reasonable legal fees) finally awarded against Customer and its Affiliates by a court of applicable jurisdiction as a result of such an IP Claim or Supplier's settlement of such an IP Claim. This Section shall not apply to the extent the IP Claim is attributable to: (a) use of the Services (or any part thereof) by or on behalf of Customer other than in accordance with the terms of this Agreement; (b) any use by or on behalf of Customer of the Services in combination with any item not supplied or recommended by Supplier; or (c) fraud, fraudulent misrepresentation, negligence or willful misconduct by or on behalf of Customer; or (d) Customer Data.
- 10.2 **Conditions.** If any third party makes a claim under any indemnity under this Agreement, or notifies an intention to make such claim against the indemnified party, the indemnified party must: (a) as soon as reasonably practicable, give written notice of

the claim to the indemnifying party; (b) not make any admission of liability, agreement or compromise in relation to the claim without the prior written consent of the indemnifying party; (c) allow the indemnifying party to have full control of the claim and the authority to settle or otherwise dispose of the claim, provided that the indemnifying party shall not make any admission of liability without the prior written consent of the indemnified party (such consent not to be unreasonably withheld or delayed); (d) use reasonable efforts to mitigate any damages, costs, losses, liabilities, and expenses resulting from any relevant claim; and (e) give the indemnifying party and its professional advisers reasonable assistance to enable them to assess, defend and/or settle the claim. The indemnified party may participate in the defense of the Claim at its own expense.

10.3 **Replacement or Modification.** If the Services (or any part thereof) become, or in Supplier's opinion are likely to become, the subject of an IP Claim, Supplier may (at its sole discretion and expense):

- a) modify or replace any part of the Service so that it ceases to be infringing; or
- b) procure for Customer the right to continue to use the infringing Services (or any component part thereof).

If after a reasonable amount of time Supplier does not provide Customer with one of the options above either party may terminate the infringing Services with immediate effect and Supplier will issue a pro-rata refund to Customer for any prepaid Fees for the infringing Services covering the remainder of the Term. Subject to Supplier's indemnity for IP Claims in Section 10.1, this Section 10.3 states Customer's sole and exclusive rights and remedies in respect of any intellectual property infringement of the Services under this Agreement.

11. LIMITATION OF LIABILITY

11.1 **NO LIMITATION.** NOTHING IN THIS AGREEMENT LIMITS OR EXCLUDES EITHER PARTY'S LIABILITY FOR: (A) DEATH OR PERSONAL INJURY; (B) GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FRAUD OR FRAUDULENT MISREPRESENTATION; (C) CUSTOMER'S LIABILITY FOR PAYMENT OF FEES; (D) SUPPLIER'S LIABILITY FOR AN IP CLAIM UNDER SECTION 10.1; OR (E) ANY LIABILITY THAT CANNOT BE LAWFULLY LIMITED OR EXCLUDED.

11.2 **EXCLUDED DAMAGES.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, OR SPECIAL DAMAGES, WHETHER SUCH ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WHICH SHALL INCLUDE (BUT ARE NOT LIMITED TO) ANY: (A) LOSS OF PROFITS; (B) LOSS OF ANTICIPATED SAVINGS; (C) LOSS OR CORRUPTION OF CUSTOMER DATA EXCEPT TO THE EXTENT THAT SUPPLIER HAS BREACHED THE AGREEMENT; (D) LOSS OF GOODWILL AND REPUTATION; (E) COST OF REPLACEMENT OF SUBSTITUTE GOODS; (F) LOSS OF BUSINESS OPPORTUNITY; OR (G) WASTED EXPENDITURE.

11.3 **LIMITATION OF LIABILITY.** IF EITHER PARTY IS DETERMINED TO HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY UNDER OR IN CONNECTION WITH THIS AGREEMENT, EACH PARTY'S AGGREGATE LIABILITY, TOGETHER WITH THAT OF ITS OFFICERS, DIRECTORS, EMPLOYEES AFFILIATES AND AGENTS, WILL BE LIMITED TO THE TOTAL AMOUNT OF FEES PAID OR PAYABLE UNDER THE APPLICABLE ORDERS OR SOWS IN THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO ANY CLAIM.

12. INSURANCE

12.1 During the Term, Supplier shall, at its own cost and expense, obtain and maintain, comprehensive insurance to cover its potential liabilities to Customer and such insurance as is legally required and appropriate to its business. Upon Customer's written request (not more than once annually), Supplier will provide insurance certificates. All insurance policies are placed with insurers rated equivalent to "A-" or better by A.M. Best.

13. MISCELLANEOUS

13.1 **Notices.** Any notice or other communication required to be given under this Agreement shall be in writing and shall be delivered by email, in the case of Supplier to contract.notices@beamery.com.

13.2 **Export Controls.** In the event that the Services are subject to applicable U.S., UK, or EU export control and economic sanctions laws, the parties agree to comply strictly with all such domestic and international export laws and economic sanctions regulations as they apply to the Services or use thereof, and to the extent consistent with the Agreement, to obtain any necessary license or other authorization to export, re-export, or transfer the Services.

13.3 **References.** Upon go-live of the Services and at the reasonable request of Supplier, Customer shall provide references to potential customers of Supplier.

13.4 **No Waiver.** No failure or delay by a party to exercise any right or remedy, in whole or in part, provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

13.5 **Severance.** If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Section shall not affect the validity and enforceability of the rest of this Agreement.

13.6 **Entire Agreement.** This Agreement and its exhibits contain the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter, including any proposal document or RFP. No variation or amendment of this Agreement shall be effective unless it is in writing and signed by the parties.

- 13.7 **Third Party Rights.** Nothing in this Agreement, express or implied, is intended to or shall confer upon any third-party person or entity any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement or under the Contracts (Rights of Third Parties) Act 1999 (to the extent applicable).
- 13.8 **Relationship of the Parties.** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorize any party to make or enter any commitments for or on behalf of any other party.
- 13.9 **Assignment.** Neither party shall assign any of their rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not unreasonably be withheld. However, consent is not required for an assignment of this Agreement in connection with a change of control, merger, stock transfer, sale or other disposition of substantially all the assets of the assigning party's business. This Agreement will bind and inure to the benefit of each party's successors and assigns.
- 13.10 **Force Majeure.** Except for Customer's payment obligations, neither party shall in any circumstances be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from an event of Force Majeure. If the Force Majeure event prevents the affected party's performance of its obligations for a continuous period of more than four (4) weeks, the party not affected by the Force Majeure event may terminate this Agreement by giving one (1) week's written notice to the affected party.
- 13.11 **Survival.** In addition to any provisions that expressly survive, the following Sections shall survive the expiration or termination of this Agreement: 6 (*Term & Termination*), 7 (*Proprietary Rights*), 8 (*Confidentiality*), 9 (*Data Protection & Security*), 11 (*Limitation of Liability*), 13 (*Miscellaneous*), and 14 (*Governing Law & Jurisdiction*).
- 13.12 **Interpretation.** A reference to a statute or statutory provision is a reference to it as amended, extended, or re-enacted from time to time. In the event of any conflict or ambiguity between any provision contained in an Order or SOW and in the Agreement, the provision in the Order or SOW shall take precedence.
- 13.13 **Authority.** Each party confirms that it has the legal power and authority to, and hereby does, enter into this Agreement and any Order and SOW in accordance with applicable law and with all due authority.
- 13.14 **Attorney's Fees.** In the event of a dispute or claim, each party shall be responsible for their own legal fees.

14. GOVERNING LAW AND JURISDICTION

- 14.1 If Customer is located outside of North America: This Agreement and any dispute, or claim arising out of or in connection with it shall be governed by and construed in accordance with the laws of England, and the parties consent and submit to the exclusive jurisdiction of the courts of England for any litigation arising out of or relating to this Agreement.
- 14.2 If the Customer is located within North America: This Agreement and any dispute, or claim arising out of or in connection with it shall be governed by and construed in accordance with the laws of the state of New York, and the parties consent and submit to the exclusive jurisdiction of the courts of New York, New York for any litigation arising out of or relating