

MASTER SERVICES AGREEMENT

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

AGREED TERMS

1. DEFINITIONS

- 1.1 **Affiliates** means any third-party that directly or indirectly through one or more intermediary’s controls, is controlled by or is under common control with, the applicable party. As used herein, the term “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 **Agreement** means this Master Services Agreement, each Order, SOW or other document signed between the parties.
- 1.3 **Authorized Users** means the nominated personnel of Customer, or its Affiliates issued with unique live logins and passwords.
- 1.4 **Beta Services** means a version or feature of the Subscription Service that Supplier has not made generally available for production use.
- 1.5 **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; the terms and conditions of this Agreement; technical information or know-how; trade or business secrets; commercial or information.
- 1.6 **Contact** means a single candidate, prospect, lead, or other individual (other than an Authorized User) whose contact information and Personal Data is submitted to and/or stored in the Subscription Service.
- 1.7 **Customer** means the customer entity (as identified in the Order) purchasing the Services.
- 1.8 **Customer Data** means the data inputted by Customer, Customer’s Affiliates, or the Authorized Users for the purpose of using the Subscription Service or facilitating Customer’s use of the Subscription Service, including Contact information and all other text, graphics, information, documentation, content, notes, images, and other materials.
- 1.9 **DPA** means Supplier’s Data Processing Agreement at <https://beamery.com/terms-and-conditions/>.
- 1.10 **Data Protection Legislation** means any legislation relating to personal data together with any regulatory requirements, data storage and export requirements, in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party in its use or provision of the Services.
- 1.11 **Documentation** means, the applicable Order, SOW, and training materials or any other documentation provided to Customer by Supplier in connection with the Services.
- 1.12 **Effective Date** means the effective date set out in the applicable Order.
- 1.13 **Enrichment Data** means customized professional and social data pertaining to Contacts generated from publicly available sources via Sub-Processors that is structured and algorithmically transformed and made available to Customer as part of the Subscription Service.
- 1.14 **Fees** mean the fees payable by Customer to Supplier agreed between the parties in applicable Order or SOW.
- 1.15 **Force Majeure** means any cause preventing either 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, save that strike or lockout of the party’s own staff shall not entitle them to claim that to be a force majeure event.
- 1.16 **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).
- 1.17 **Order** means an order form entered into between Supplier and Customer or an Affiliate of Customer, as applicable, which references this Agreement.
- 1.18 **Professional Services** means implementation, integration, and/or training services agreed between the parties as set out in an Order or SOW.
- 1.19 **Restricted Information** means payment card information; financial information (or any similar data regulated by GLBA or equivalent legislation); social security numbers; passport numbers; driving license numbers; insurance information; physical or mental health (or any similar data regulated by HIPPA or equivalent legislation); medical conditions; political opinions;

religious or philosophical beliefs; trade union membership; genetic data; biometric data; sex life; or criminal and/or background checks. Restricted Information does not include voluntarily given self-identification data such as gender, sexual orientation, racial or ethnic data, or vaccination status.

- 1.20 **Security Centre** means the Supplier's documentation with regards to information security and data privacy at www.beamery.com/policy/security as amended from time to time, provided that the amended technical and organizational measures are not less protective than those stated therein.
- 1.21 **Services** means, collectively (as applicable), the Subscription Service and Professional Services.
- 1.22 **SLA** means the service level agreement and support services description at <https://beamery.com/terms-and-conditions>, as amended from time to time.
- 1.23 **Statement of Work/SOW** means an order for Professional Services as agreed in writing by both parties.
- 1.24 **Sub-Processors** means the Supplier's sub-processors set out at <https://beamery.com/terms-and-conditions>, as updated from time to time.
- 1.25 **Supplier** means the applicable Beamery entity identified in the Order.
- 1.26 **Subscription Service** means Supplier's proprietary web-based candidate relationship management and marketing applications, tools and platform, any ancillary products and services, including website hosting, and the support services, that Supplier provides pursuant to this Agreement and further described in the applicable Order.
- 1.27 **Term** means the Initial Term together with all subsequent Renewal Terms.
- 1.28 **Third Party Services** means any applications, products, applicant tracking systems, links, and services not provided by Supplier that are used by Customer in conjunction with the Services.

2. RIGHTS TO USE SERVICES

- 2.1 In consideration of payment of the Fees and subject to this Agreement Supplier shall provide the Services to Customer and any of its Affiliates as set out in each Order.
- 2.2 Both parties agree that that any Affiliate may enter into an Order directly with Supplier or Supplier's Affiliate, where applicable and such Order shall be governed by this Agreement.
- 2.3 Each party shall be responsible for the acts and omissions and any loss or damage arising therefrom of such of its Affiliates to the extent they would be under this Agreement if they had themselves performed the act or omission.
- 2.4 Each party confirms that it has the legal power to, and hereby does, enter into this Agreement and any Order in accordance with applicable law and with all due authority.

3. SUPPLY OF SERVICES

- 3.1 **Subscription Service.** Supplier shall provide access to the Subscription Service, as set out in an Order for the duration of the Term.
- 3.2 **Support Services and Service Levels.** Supplier shall provide the Subscription Services in accordance with the SLA which forms part of the Agreement.
- 3.3 **Professional Services.** Supplier will provide Professional Services as set out in the applicable Order or SOW. Supplier will be providing implementation, integration and training services relevant to Supplier's product and will not be doing any custom software development for Customer. Customer will provide Supplier with all information and access permissions reasonably requested by Supplier to provide the Services and shall reasonably co-operate with Supplier in all matters relating to the Services. In the event that Supplier requests access to Customer's internal systems, Supplier will comply with Customer's reasonable security requirements which have been notified to Supplier in advance. Any request to change the scope of the Professional Services shall be agreed between the parties and set out in an Order or a SOW. Supplier shall not be responsible or liable for any delay in providing the Professional Services that is caused in whole or in part by an act or omission of Customer or its Affiliates, or any of their Authorized Users, other representatives or third party including network connections, or telecommunications links, or any internet issues.
- 3.4 **Enrichment Data.** Supplier shall provide Customer with Enrichment Data as part of its provision of the Services. Customer acknowledges that the Supplier provides this service via its Sub-Processors.
- 3.5 **Beta Services.** At its option Customer may make use of any Beta Services offered at no charge. Beta Services: (a) are provided AS IS with no warranty and are for evaluation and testing purposes only; (b) are not subject to the SLA; and (c) may be subject to additional terms (as provided by the Supplier). Beta Services' will be available to Customer until such beta period ends or the date Supplier makes a production version of the Beta Services generally available to its customers. Supplier may discontinue Beta Services at any time in its sole discretion and without any liability, and Customer acknowledges that Supplier may never make them generally available.

4. SUPPLIER WARRANTIES

- 4.1 Supplier warrants that:
 - a) the Services shall substantially perform as specified in the Documentation during the Term;

- b) support Services and Professional Services will be rendered with due care, skill and ability, and in accordance with recognized industry standard practices;
- c) it shall comply with the measures and standards set out in the DPA and Security Centre; and
- d) it shall comply with all applicable laws.

4.2 Non-Conformance.

- a) The performance warranty in Section 4.1 shall not apply to the extent that any non-conformance of the Services arises due to the use by or on behalf of Customer contrary to this Agreement, Documentation, Supplier's express instructions, or any modification or alteration of the Services by any party other than Supplier.
- b) If the Services do not conform to the performance warranty in Section 4.1, 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 any non-conformance, Supplier may terminate the Agreement or the applicable SOW and issue a pro-rata refund to the Customer of any Fees paid in advance for work not completed under a SOW or for the remainder of the Term in respect of the Subscription Services. Such correction, substitution, or refund constitutes Customer's sole and exclusive remedy in connection with any non-conformance with the performance warranty.

4.3 **Third Party Services.** Customer may elect to use the Services in conjunction with Third Party Services. Customer's use of such Third Party Services is subject to the terms and conditions applicable to such Third Party Services and Supplier makes no representations or warranties in relation to such Third Party Services including continuous availability of Third Party Services.

4.4 **DISCLAIMER.** EXCEPT AS SET FORTH UNDER THIS SECTION 4 OR AS OTHERWISE SPECIFIED IN THIS AGREEMENT, SUPPLIER MAKES NO OTHER WARRANTY WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER, AND DISCLAIMS ALL STATUTORY OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE INCLUDING CUSTOMERS BUSINESS REQUIREMENTS. SUPPLIER DOES NOT WARRANT THAT THE SERVICES ARE ERROR-FREE, 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 CAUSED BY ERRORS OR OMISSIONS IN ANY INFORMATION, DATA, INSTRUCTIONS, OR SCRIPTS PROVIDED TO SUPPLIER BY CUSTOMER IN CONNECTION WITH THE SERVICES, OR ANY ACTIONS TAKEN BY SUPPLIER AT CUSTOMER'S DIRECTION.

5. CUSTOMER OBLIGATIONS

5.1 **Limits.** Customer's use of the Subscription Services shall be limited in accordance with the limits in the applicable Order. Customer shall use the Subscription Services in accordance with the terms of Supplier's fair use policy at <https://beamery.com/policy/fup>, as updated from time to time, provided that Supplier shall not materially diminish such limits.

5.2 **Authorized Users.** Customer shall notify Supplier promptly if it becomes aware that any Authorized User's login details have been shared, compromised, or subject to unauthorized disclosure. If it is established that the Authorized Users have shared login details with other personnel or is otherwise over its Authorized User 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 Authorized Users for the then current contract year (in its entirety).

5.3 **Prohibited and Unauthorized Use.** Customer agrees that it will not:

- (a) use the Subscription Service to collect, manage or process Restricted Information;
- (b) use or launch any automated system that sends more request messages to Supplier's servers at an API rate above 20 requests per second, or to use the Subscription Service to email purchased lists;
- (c) attempt to gain unauthorized access to the Subscription Service;
- (d) use the Services in a way that threaten the security, integrity, or availability of the Subscription Services, including but not limited to uploading content or files that contains viruses;
- (e) directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover or disclose to any third party the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services;
- (f) make the Subscription Services, Documentation, content or data available for the benefit of any third party (except to its Affiliates with permitted access in accordance with this Agreement), or sell, resell, license, sublicense, distribute, rent or lease any Services, Documentation to any third party for any purpose, commercial or otherwise.

5.4 **Suspension for Unauthorized Use.** Supplier may suspend, in its reasonable discretion, any user's access to the Services, for use of the Service in a way that violates applicable law or the terms of this Agreement. Supplier will notify Customer of such suspension as soon as practicably possible. Any suspension shall be as limited in scope and duration as reasonably possible.

6. FEES & PAYMENT

6.1 **Annual Fees.** The Fees for the Services will remain fixed for the Initial Term, as set out in the Order, ("**Initial Term**"). The Fees for any additional Services will be set out in a separate Order. Unless otherwise stated, all Fees paid or payable are non-refundable and due annually in advance.

6.2 **Expenses.** If applicable, the parties agree that Supplier's travel-related expenses incurred in connection with the Services will be reimbursed by Customer in accordance with Customer's standard travel policy provided to Supplier upon request.

6.3 **Invoicing.** In respect of the Subscription Service, Supplier will invoice Customer on or promptly after the Effective Date, and on or around each anniversary thereof. In respect of any other Fees, invoices shall be issued in accordance with the terms of

the applicable Order. 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. If applicable, Customer shall provide Supplier with all information required to correctly submit an invoice to Customer through Customer's electronic spend management and invoicing system prior to or within five days of the Order Effective Date to accounts@beamery.com.

- 6.4 **Non-Payment.** Supplier will not exercise its rights under this [Section 6.4](#) 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 ("**Non-Payment Notice**"). If such payment remains outstanding ten (10) days from the date of the Non-Payment Notice, without prejudice to any of its other rights and remedies, Supplier may:
- without liability to Customer, disable Customer's access to the Subscription Service and shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - charge Customer interest at the rate of one percent per month or lesser if such amount is required by applicable law on any overdue sums from the due date until the date of receipt of payment by Supplier (inclusive).
- 6.5 **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. If Customer is Tax exempt or pays state 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 the Supplier receives a sum equal to the amount to be paid under the applicable Order.

7. TERM & TERMINATION

- 7.1 **Term.** This Agreement shall commence on the Effective Date and continue until expiry or termination as set out below.
- 7.2 **Renewal Terms.** After expiry of the Initial Term, the Order shall automatically renew for successive twelve (12) month periods (each a "**Renewal Term**") unless: either party provides notice of non-renewal to the other party no less than sixty (60) days before the end of the current Term; or it is otherwise terminated in accordance with the provisions of this [Section 7](#).
- 7.3 **Renewal Fees.** Supplier may increase the Fees at the start of each Renewal Term, such increase shall not exceed 8%.
- 7.4 **Termination for Cause.** Without affecting another right or remedy available to it, the relevant party may terminate this Agreement, Order, or SOW as applicable to the breach, by giving written notice of such termination to the other party:
- 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;
 - 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 in writing to do so; or
 - immediately upon the occurrence of either 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 anything equivalent to the foregoing occurring under national or local law, except where for the purposes of a solvent and bona fide amalgamation or reorganization.
- 7.5 **Effect of Termination.** Upon termination or expiration of the Term:
- all rights granted hereunder to use the Services shall cease immediately and/or terminate automatically;
 - Customer shall promptly pay any Fees, taxes, or other amounts due or outstanding; and
 - in the case of termination by Customer for cause under [Section 7.4b](#)) the Supplier will issue a pro-rata refund to the Customer of any Fees paid in advance for work not completed under a SOW or for the remainder of the Term in respect of the Subscription Services, as applicable to the breach.
- 7.6 **Retrieval & Deletion of Customer Data.** Customer may export copies of Customer Data in .csv format 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 thirty (30) days after termination or expiration of this Agreement.

8. PROPRIETARY RIGHTS

- 8.1 **Supplier's Proprietary Rights.** This is an Agreement for access to and use of the Subscription Service as set out herein. Supplier and its licensors remain the sole owner of all Intellectual Property Rights therein and other right, title, and interest in the Documentation, Supplier's trademarks and service marks, the Services and related software. Except as expressly stated herein, this Agreement does not grant Customer any Intellectual Property Rights.
- 8.2 **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 the provision of the Services or otherwise in connection with this Agreement shall not cause Supplier to infringe any applicable law or the rights, including any Intellectual Property Rights, of any third party.

9. CONFIDENTIALITY

- 9.1 **Confidentiality Undertaking.** Subject to the terms of this Section, each party shall, during the Term of this Agreement, keep the other party's Confidential Information confidential. Each party shall not use the other party's Confidential Information other than as required for the performance of its obligations under this Agreement, or disclose to any third party (except its Affiliates, Sub-Processors and professional advisors or as may be required by any law or regulatory authority) the other party's Confidential Information without the prior written consent of the other party. Each party shall use its reasonable endeavours (not less than a party 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.
- 9.2 **Exceptions.** Confidential Information shall not be deemed to include any information which:
- is or becomes publicly known other than through any act or omission of the receiving party;
 - was in the other party's lawful possession before the disclosure;
 - is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - was or is independently developed by the receiving party without reference to the Confidential Information of the other party.
- 9.3 **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.

10. DATA & SECURITY

- 10.1 **Data Protection.** Both parties shall comply with their obligations under Data Protection Legislation and in particular those set out in the DPA.
- 10.2 **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 Centre. Those safeguards will include, but will not be limited to, measures designed to protect against the unauthorized access to or disclosure of Customer Data.
- 10.3 **Data Use for Development.** Supplier and its Affiliates may collect data derived from the Customer's use of the Subscription Services for development, artificial intelligence learning, benchmarking, and marketing, and for creating analyses, provided that such data contains no Customer Personal Data. All such data is collected in a form that does not permit direct association with Customer, any specific Authorized User, or other individual or third party. Supplier shall retain ownership of such data.
- 10.4 **Customer Data Protection.** Customer warrants that it shall comply with all applicable Data Protection Legislation, all local data storage requirements, and that it has all necessary appropriate consents and notices in place (or other lawful basis) to enable lawful transfer of the Personal Data to Supplier for the duration and purposes of the Agreement so that Supplier may lawfully use, process, and transfer the Personal Data in accordance with this Agreement on Customer's behalf. 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, and expenses, including 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 Legislation.

11. INDEMNIFICATION

- 11.1 **Supplier Indemnification.** Supplier shall defend and indemnify Customer and its Affiliates against any losses, costs, expenses (including reasonable legal costs) and damages in connection with any third-party claim or action brought against Customer to the extent that such claim directly arises from an allegation that the use of the Services (or any part thereof) infringes the Intellectual Property Rights of a third party ("**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 where such use of the Services directly gives rise to the IP Claim; or (c) fraud, fraudulent misrepresentation, negligence or wilful misconduct by or on behalf of Customer.
- 11.2 **Conditions.** If any third party makes a claim under any indemnities 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 (such consent not to be unreasonably withheld or delayed); (c) allow the indemnifying party to have full control of the claim and the authority to settle or otherwise dispose of the claim; (d) use reasonable endeavours 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.
- 11.3 **Replacement or Modification.** In the event 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 Order for the affected Services with immediate effect and Supplier will issue a pro-rata refund to the Customer for any prepaid Fees covering the remainder of the Term. This section states Customer's sole and exclusive rights and remedies in respect of any IP Claim.

12. LIMITATION OF LIABILITY

- 12.1 **NO LIMITATION.** NOTHING IN THIS AGREEMENT EXCLUDES EITHER PARTY'S LIABILITY FOR: (A) DEATH OR PERSONAL INJURY CAUSED BY THEIR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (B) FOR FRAUD OR FRAUDULENT MISREPRESENTATION; (C) CUSTOMER'S LIABILITY FOR PAYMENT OF FEES; (D) EACH PARTY'S LIABILITY FOR VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS; (E) SUPPLIER'S LIABILITY FOR AN IP CLAIM UNDER SECTION 11.1; OR (F) ANY LIABILITY THAT CANNOT BE LAWFULLY LIMITED OR EXCLUDED.
- 12.2 **EXCLUDED DAMAGES.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOSSES OR DAMAGES WHETHER THE SAME ARE INCURRED DIRECTLY OR INDIRECTLY OR ARE IMMEDIATE OR CONSEQUENTIAL, AND WHETHER THE SAME ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WHICH FALL WITHIN ANY OF THE FOLLOWING CATEGORIES: (A) INDIRECT, CONSEQUENTIAL, OR SPECIAL DAMAGES EVEN IF THE OTHER PARTY WAS AWARE OF THE CIRCUMSTANCES IN WHICH SUCH SPECIAL DAMAGE COULD ARISE; (B) LOSS OF PROFITS; (C) LOSS OF ANTICIPATED SAVINGS; (D) LOSS OR CORRUPTION OF CUSTOMER DATA EXCEPT TO THE EXTENT THAT SUPPLIER HAS BREACHED THE AGREEMENT; (E) LOSS OF GOODWILL AND REPUTATION; (F) COST OF REPLACEMENT OF SUBSTITUTE GOODS; OR (G) LOSS OF BUSINESS OPPORTUNITY.
- 12.3 **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 ORDER OR SOW IN THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO ANY CLAIM.

13. INSURANCE

- 13.1 **Supplier Cover.** 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.

14. MISCELLANEOUS

- 14.1 **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 Customer to the email account registered with Supplier in the Order and in the case of Supplier to contract.notices@beamery.com. If such email is sent on or after 5:00pm on a business day, or on a day that is not a business day, it will be deemed served at 9:30am the next business day.
- 14.2 **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.
- 14.3 **Marketing.** For the Term of this Agreement, Customer grants to Supplier a non-exclusive right to use Customer's company name, logo and/or relevant trademarks to market and promote the Services. Supplier will comply with Customer's marketing and brand guidelines that are communicated to Supplier. Customer agrees to participate in press releases, video and text webinars, Supplier's website, blog posts, social media, case studies, event and exhibition marketing collateral, internal communication documents and sales collateral. Supplier shall provide Customer with a draft of the proposed marketing material for Customer's approval which shall not be unreasonably withheld or delayed. Customer acknowledges that it is a condition of any marketing discount that the permissions under this Section shall continue for the Term.
- 14.4 **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.
- 14.5 **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.
- 14.6 **Entire Agreement.** This Agreement contains 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. No variation or amendment of this Agreement shall be effective unless it is in writing and signed by the parties.

- 14.7 **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).
- 14.8 **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.
- 14.9 **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.
- 14.10 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered (which may be done so by the exchange of PDF attachments to emails) shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 14.11 **Force Majeure.** 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.
- 14.12 **Survival.** In addition to any provisions that expressly survive, the following provisions shall survive the expiration or termination of this Agreement: Sections 7 (Term & Termination), 8 (Proprietary Rights), 9 (Confidentiality), 10 (Data Protection & Security), 12 (Limitation of Liability), 14 (Miscellaneous), and 15 (Governing Law & Jurisdiction).
- 14.13 **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.

15. GOVERNING LAW AND JURISDICTION

- 15.1 If the Customer is located outside of North America, 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 Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement. If the Customer is located within North America, any dispute, claim arising out of or in connection with it shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to or application of its conflicts of law principles. The parties hereto hereby irrevocably and unconditionally consent to and submit to the exclusive jurisdiction of the courts of the State of Delaware and of the United States of America located in such state (the "Delaware Courts") for any litigation arising out of or relating to this Agreement, waive any objection to the laying of venue of any such litigation in the Delaware Courts and agree not to plead or claim in any Delaware Court that such litigation brought therein has been brought in any inconvenient forum