

## Staff Smarter

### Terms & Conditions of Use Last Updated: 29 September 2020

These Terms and Conditions (as defined below) apply to the shift management services provided by Digital Staff Solutions Limited (trading as "**Staff Smarter**") in which Staff Smarter provides an online platform (the "**Staff Smarter Platform**") which enables businesses users to fill gaps in their staffing rotas with their own internal workers (each such business user being a "**Client**").

These Terms and Conditions prevail over any other terms offered for the use by a Client of the Staff Smarter Platform accessed by any means, including mobile and desktop, without limitation.

The Client will be deemed to have accepted and agreed to these Terms and Conditions when any of the following events occurs: (i) the Client signs up to use the Staff Smarter Service; (ii) the Client uses the Staff Smarter Platform; (ii) any End user or Worker (as defined below) find or fulfils any shift for the Client.

We are Digital Staff Solutions Limited (also referred to herein as "**Staff Smarter**", "**we**", "**us**", and "**our**") - a company registered in England and Wales. Our company registration number is 10434349 and our registered office is at Second Floor C/O FKGB, 201 Haverstock Hill, London, NW3 4QG. Our registered VAT number is 255259294.

If you are a Client, please read these Terms and Conditions carefully and in conjunction with any other agreement which may be in place between us and the Client. We provide the Platform for the benefit of business users and will not contact Workers save as agreed with a Client and we will never send marketing communications to Workers.

You are advised to check these Terms and Conditions from time to time as we reserve the right to amend or update these Terms and Conditions with or without notice to you. By using the Staff Smarter Platform after any changes have been made, you agree to the new terms.

#### 1. INTERPRETATION

The following definitions and rules of interpretation apply in these Terms & Conditions.

##### 1.1 Definitions:

"**Business Day**" means a day, other than a Saturday, Sunday or public holiday in England, on which clearing banks in the city of London are generally open for business.

"**Client**" a business user of the Staff Smarter Platform.

"**Client Content**" means any materials delivered to Staff Smarter for use in connection with the Staff Smarter Platform (whether existing prior to the Effective Date or created or coming

into being during the performance of these Terms and Conditions) including any Marks of the Client, Confidential Information of the Client and any other property of any kind owned or controlled by or licensed by a third party to the Client.

**“Client Brand Guidelines”** means the Client’s brand guidelines, as provided to Staff Smarter from time to time.

**“Confidential Information”** means confidential commercial, financial, marketing or technical information, know-how, trade secrets, End User Personal Data and other confidential information relating to either Staff Smarter or the Client (including the terms of these Terms and Conditions) in any form or medium whether disclosed orally or in writing before or after the date of these Terms and Conditions, together with any reproductions of such information in any form or medium or any part of this information.

**“Controller”** means the entity that, either alone or jointly with others, determines the means and purposes of the processing of Personal Data.

**“Data Protection Legislation”** means all applicable laws, regulations, regulatory and governmental requirements relating to processing of Personal Data including, without limitation, all the provisions of the UK Data Protection Act 1998, the ePrivacy Regulations and, from 25 May 2018, the GDPR, together with any national implementing legislation, in each case as amended, re-enacted or superseded from time to time.

**“Documentation”** means any documents made available to the Client by Staff Smarter which sets out a description of the Staff Smarter Platform, the on-boarding information and the user instructions for the same.

**“Effective Date”** means the date that the Client accepts and agrees these Terms and Conditions in accordance with the provisions set forth herein.

**“Employment Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended, consolidated, re-enacted or replaced from time to time.

**“End User”** means any temporary worker, employee of or anyone engaged by the Client in any capacity who accesses or uses the Staff Smarter Platform.

**“End User Personal Data”** means the Personal Data of any and all End Users and Workers that are processed by a party in connection with the use of or access to the Staff Smarter Platform.

**“ePrivacy Regulations”** means the Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) (as amended).

**“GDPR”** means the EU General Data Protection Regulation (2016/679).

**“Intellectual Property Rights”** all intellectual property rights including patents, registered designs, trademarks and service marks (whether registered or not), copyright, database rights, design rights and all similar property rights including those subsisting (in any part of

the world) in inventions, designs, drawings, performances, computer programs, semi-conductor topographies, Confidential Information, business names, goodwill and the style and presentation of goods or services and applications for protection of any of the above rights.

**“Marks”** means the trademarks, service marks, logos and other distinctive brand features of a party.

**“Personal Data”** means any information relating to an identified or identifiable individual and includes any information that is ‘personal data’ within the meaning of Data Protection Legislation.

**“Personal Data Breach”** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data.

**“Pilot Term”** means a period of one (1) month from the Effective Date.

**“Privacy Policy”** means the policy that outlines how Staff Smarter manages, processes and secures personal data which is collected by Staff Smarter to provide commercial services.

**“Processor”** means any person other than an employee of the Controller that processes Personal Data on behalf of the Controller.

**“processing”** means any operation or set of operations that is performed in relation to Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, restriction, erasure or destruction; and “process” and “processed” shall be construed accordingly.

**“Supervisory Authority”** means any regulatory, supervisory, governmental or other competent authority with jurisdiction or oversight of Data Protection Legislation.

**“Service Fee”** means the fees charges by Staff Smarter for managing the provision of the Staff Smarter Platform.

**“Staff Smarter Materials”** means all materials delivered or made available to the Client for use in connection with the Staff Smarter Platform including on-boarding and marketing information, Staff Smarter Documentation, Staff Smarter Marks, Confidential Information of Staff Smarter and any other property of any kind owned or controlled by or licensed by a third party to Staff Smarter.

**“Term”** means a period as the Effective Date and ending once a Client has ceased using the Florence Platform and paid all Service Fees outstanding.

**“Terms and Conditions”** means these terms and conditions together with any document incorporated by reference herein.

1.2 In these Terms and Conditions headings are for convenience only and do not affect interpretation.

1.3 If there is any inconsistency between a term in the body of these Terms and Conditions and a term in any Schedule or other document referred to or otherwise incorporated into these Terms and Conditions, the term in the body of these Terms and Conditions will take precedence.

1.4 Unless the context indicates a contrary intention:(a)words importing the singular include the plural and vice versa, any gender includes the other genders, if a word or phrase is defined, cognate words and phrases have corresponding definitions; (b) the words “other”, “includes”, “including” and “in particular” do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible; and (c) any reference in these Terms and Conditions to Staff Smarter’s right to exploit or exercise any right shall be deemed to include a right to license, permit or authorise others to undertake such activity.

## **2. Staff Smarter OBLIGATIONS**

2.1 As between the parties, Staff Smarter shall:

(a) provide the Client with access to and use of the Staff Smarter Platform, in accordance with the terms of these Terms and Conditions;

(b) load the Client Content into Staff Smarter’s servers for use on the Staff Smarter Platform;

(c) be responsible for the storage, hosting, security, serving and delivery of the Client Content;

(d) maintain the Staff Smarter Platform;

(e) from time to time report to the Client (such details as agreed between the parties) on the End User’s usage of and interactions with the Staff Smarter Platform in such frequency, detail and format as Staff Smarter generally makes available to other Staff Smarter Platform Clients;

(f) take reasonable precautions to preserve the integrity of any data which it processes and to prevent any corruption or loss of such data;

(g) use its reasonable commercial endeavours to comply with any time-frames as agreed between the parties; and

(h) comply with the Client Brand Guidelines (as supplied by the Client).

### **3. THE CLIENT OBLIGATIONS**

3.1 As between the parties, the Client shall:

- (a) be solely responsible for ensuring that it has all the necessary rights, permissions and consents to upload Client Content to the Staff Smarter Platform;
- (b) have sole responsibility for direct End User management and shall have a direct contractual relationship with End Users;
- (c) be responsible for the provision of support to End Users;
- (d) provide such co-operation as Staff Smarter may reasonably require in all matters relating to the Staff Smarter Platform;
- (e) promptly deliver to Staff Smarter the Client Content, Client Marks and all other content and information as Staff Smarter may reasonably require in order to make available the Staff Smarter Platform in such formats as Staff Smarter may specify. The Client agrees that its failure to provide such content and information may result in a delay in Staff Smarter providing the Staff Smarter Platform in respect of which Staff Smarter shall not be responsible;
- (f) employ, implement and maintain security measures and procedures to ensure that no unauthorised person may gain access to the Staff Smarter Platform;
- (g) be solely responsible for all activity occurring under End Users' accounts and shall abide by all applicable law in connection with its and its End Users' use of the Staff Smarter Platform, including those related to data privacy, and shall notify Staff Smarter immediately if any unauthorised use of any password or account or of any other known or suspected breach of security;
- (h) provide the Client Brand Guidelines and any updates thereof;
- (i) in connection with the Client's use of End Users through the Staff Smarter Platform, shall comply with any other agreements incorporated by reference herein; and
- (j) procure that, prior to accessing the Staff Smarter Platform, End Users expressly accept the Terms of Service and procure the End Users' compliance with the same.

3.2 Before uploading any Client Content, the Client shall confirm the End User identity and agrees, as between the parties to be responsible for:

- (a) onboarding and registering End Users on the Staff Smarter Platform, and ensuring the accuracy of End User Personal Data;
- (b) paying End User's for their work as required by UK law and making any necessary deductions for tax and National Insurance contributions;

- (c) ensuring timesheets are correct prior to processing payroll
- (d) resolving any disputes with End Users; and
- (e) procuring that End Users comply with any Staff Smarter policies (where applicable).

#### **4. SCOPE OF THE LICENCE**

4.1 Subject to, and conditional upon compliance with, the provisions of these Terms and Conditions, Staff Smarter hereby grants to the Client a limited, non-exclusive and non-transferable licence (without the right to grant sub-licences) during the Term, to use:

- (a) the Staff Smarter Platform in accordance with its intended functionality; and
- (b) the Staff Smarter Materials.

4.2 Except as otherwise expressly permitted by Staff Smarter, the Client is not authorised under these Terms and Conditions to:

- (a) license, sub-license, sell, resell, transfer, assign, rent, lease, export, import, act as an intermediary or provider, distribute or otherwise commercially exploit or make available to any third party the Staff Smarter Platform or Staff Smarter Materials in any way;
- (b) modify or make derivative works based upon the Staff Smarter Platform or the Staff Smarter Materials; or
- (c) reverse engineer or access the Staff SmarterForce App or the Staff SmarterForce Platform in order to: (i) build a competitive product or service; (ii) build a product using similar ideas, features, functions or graphics of the Staff Smarter Platform; or (c) copy any ideas, features, functions or graphics of the Staff Smarter Platform.

4.3 The Client must not use the Staff Smarter Platform in any way that is unlawful, illegal, fraudulent or harmful or in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

#### **5. CONSIDERATION/PAYMENT**

5.1 In consideration of the rights granted and services provided to the Client under these Terms and Conditions by Staff Smarter, and subject to the completion of the Pilot Term, the Client shall pay the Service Fee as separately agreed between the Client and Staff Smarter in writing, which shall include email.

5.2 Staff Smarter shall submit invoices on a weekly basis and any such invoices shall be due immediately and payable within 14 days.

5.3 Overdue invoices shall attract interest at the prevailing statutory rate from time to time.

## **6. INTELLECTUALPROPERTY**

- 6.1 Neither party grants any rights in its respective Marks or other Intellectual Property Rights other than those expressly granted in these Terms and Conditions. There are no implied licences granted under these Terms and Conditions and any rights not expressly granted by the Client or Staff Smarter to each other (whether further to these Terms and Conditions or otherwise) are hereby fully and expressly reserved to, respectively, Client or Staff Smarter, as the case may be.
- 6.2 As between the parties:
- (a) Staff Smarter retains and owns all right, title and interest in and to the Staff Smarter Platform, the Staff Smarter Materials, the Staff Smarter Marks, and all derivatives, enhancements and modifications thereof and all Intellectual Property Rights subsisting therein; and
  - (b) the Client retains and owns all right, title and interest in and to the Client Content, the Client Marks and all derivatives, enhancements and modifications thereof and all Intellectual Property Rights subsisting therein.
- 6.3 The Client shall only access the Staff Smarter Platform in the manner permitted by Staff Smarter and shall not attempt at any time to circumvent system security or access the source code or object code to the Staff Smarter Platform or compiled code.
- 6.4 Save only for any Client Content and Client Marks incorporated therein, all Intellectual Property Rights in and to the Staff Smarter Platform (including all source code and any developments and customisations to them) shall remain the absolute property of Staff Smarter and/or its third-party licensors.
- 6.5 The Client hereby grants to Staff Smarter and its nominees a non-exclusive, right and licence to host, transmit, store, copy, modify, distribute, perform, display, reformat and otherwise use the Client Content and Client Marks in order to:
- (a) develop, host and support the Staff Smarter Force Platform and make the same available to End Users;
  - (b) host the Client Content and Client Marks on servers owned or controlled by or on behalf of Staff Smarter;
  - (c) display, communicate to the public and distribute the Client Content and Client Marks, in whole or in part, in and through the Staff Smarter Platform; and
  - (d) otherwise perform its obligations hereunder.

## **7. APPOINTMENT OF REPRESENTATIVES**

7.1 Each party shall appoint an authorised representative who shall co-ordinate his/her party's respective activities under these Terms and Conditions and provide a point of contact on all matters concerning the day-to-day provision of the Staff Smarter Platform.

## **8. ADDITIONAL SERVICES**

8.1 Staff Smarter may be requested by the Client to provide a variety of additional services that are over and above the Staff Smarter Platform provided under these Terms and Conditions. Any such additional services shall be provided pursuant to a separate agreement with remuneration, conditions, costs and other material terms to be negotiated between the parties.

8.2 Staff Smarter, in its sole discretion, reserves the right to add, remove, or modify features or functions, or to provide fixes, updates and upgrades, to the Staff Smarter Platform.

## **9. WARRANTIES**

9.1 Each party represents and warrants to the other party that:

- (a) it has the full power and authority to enter into and to perform these Terms and Conditions and that the person executing these Terms and Conditions on behalf of the Party is authorised to do so;
- (b) the execution and performance of the obligations and duties of these Terms and Conditions by either party will not violate any agreement to which the other party is a party or by which it is otherwise bound;
- (c) any and all activities undertaken by it in connection with these Terms and Conditions will be performed in compliance with all applicable laws, rules, and regulations (including but not limited to those relating to Data Protection Legislation).
- (d) it shall perform all its obligations in these Terms and Conditions with due care, skill, promptness and diligence;
- (e) its materials (i.e. the Staff Smarter Materials and the Client Content, as applicable) will not violate or infringe the rights of any third party, including without limitation the Intellectual Property Rights or rights of privacy;
- (f) its Marks will not violate or infringe the rights of any third party, including without limitation the Intellectual Property Rights or rights of privacy; and
- (g) it shall not use the other party's materials (the Staff Smarter Materials and the Client Content, as applicable) other than as expressly permitted herein.

9.2 Staff Smarter hereby further warrants and represents that:

- (a) Staff Smarter Materials shall, to the best of its knowledge, be free from contamination by any computer virus and that Staff Smarter shall not introduce any viruses or unauthorised software on the Client's systems while performing the Services;
- (b) the services performed providing the Staff Smarter Platform shall at all times be performed by appropriately skilled and experienced persons; and
- (c) the services performed providing the Staff Smarter Platform will be performed in all material respects in accordance with the terms of these Terms & Conditions.

9.3 The Client hereby further warrants and represents that:

- (a) it has and will maintain throughout the Term all rights, authorisations and licences that are required in order for: (i) it to fully perform its obligations here under; (ii) it to grant the rights and licences granted herein; and (iii) Staff Smarter to use the Client Content and Client Marks, as permitted herein;
- (b) it shall be solely responsible for End Users' use of and access to the Staff Smarter Platform, and the Client shall operate the same and deal with End Users in accordance with all applicable laws (including all Data Protection Legislation);
- (c) it shall be solely responsible for any resulting employment or engagement by the Client or its affiliates of any End User, including such End Users' health and safety, the payment of any salaries/fees, operating PAYE and any other employment-related responsibilities; and
- (d) it shall comply with these Terms & Conditions.

9.4 Except as expressly set forth in these Terms and Conditions, neither party makes any warranties, express or implied and, to the fullest extent possible under applicable law, expressly disclaims any warranties, terms and conditions, express, implied or statutory with respect thereto, including without limitation, warranties or conditions of satisfactory quality, fitness for a particular purpose, as to the use of reasonable skill and care and non-infringement, and their equivalents under the laws of any jurisdiction.

9.5 Except as expressly set forth in these Terms and Conditions, the parties acknowledge that the Staff Smarter Materials, the Staff Smarter Platform and/or Client Content (as applicable) are provided "as-is" without any further warranty, express or implied, of any kind. Neither party represents that the Staff Smarter Materials, the Staff Smarter Platform and/or Client Content (as applicable) are free of inaccuracies, errors, defects or bugs or that they have been tested for such in any way.

## **10. INDEMNITY AND LIABILITY**

10.1 Each party ("**Indemnitor**") will indemnify and hold the other party ("**Indemnitee**"), its parent, subsidiary and affiliated companies and entities and its officers, directors, employees and agents (collectively, "**Indemnitee Indemnified Parties**") harmless from and against any and all liabilities, costs, expenses, damages and losses (excluding any

indirect or consequential losses including, without limitation, loss of profit, loss of reputation) and/or all interest, penalties and reasonable bona-fide third party legal costs and all other third party, reasonable professional costs and expenses actually suffered or incurred by the Indemnitee Indemnified Parties arising directly out of or in connection with any third-party claims or actions brought against the Indemnitee Indemnified Parties to the extent they are based upon a claim that, if true, would:

- (a) in the case of Staff Smarter, be an infringement of a third party's Intellectual Property Rights arising out of or in connection with the authorised use of the Staff Smarter Platform or receipt of the benefit of any of the services provided hereunder;
- (b) in the case of the Client, be a breach of any of its representations or warranties in clause 9 of these Terms and Conditions; and
- (c) in the case of each party, be in breach of clause 15 of these Terms and Conditions,
- (d) in the case of the Client any claims made by End Users with respect to claims relating to employment, payment for services rendered or any other related Dispute.(collectively, "Indemnified Claims").

10.2 If any third party makes an Indemnified Claim, or notifies an intention to make an Indemnified Claim, against the Indemnitor which may reasonably be considered likely to give rise to a liability under this indemnity, the Indemnitee shall:

- (a) as soon as reasonably practicable, give written notice of the Indemnified Claim to the Indemnitor, specifying the nature of the Indemnified Claim in reasonable detail;
- (b) not make any admission of liability, agreement or compromise in relation to the Indemnified Claim without the prior written consent of the Indemnitor (such consent not to be unreasonably withheld or delayed);
- (c) allow the Indemnitor sole control and conduct of any action, litigation, settlement, negotiations or other proceedings in respect of the Indemnified Claim at the Indemnitor's sole expense and any settlement shall be solely within the Indemnitor's control, provided that the Indemnitee shall have the right but not the obligation to participate in the defence of any such claim and to be represented by counsel of its choice, at the Indemnitee's sole expense, and provided further that the Indemnitee Indemnified Parties will not settle any such Indemnified Claim without the prior written consent of the Indemnitor. Such consent shall not be unreasonably withheld or delayed, provided that nothing in the foregoing shall require either Party to consent to a settlement that admits liability or imposes any ongoing obligations on such Party.

10.3 Where any Indemnified Claim is made by a third party against the Indemnitee alleging the Indemnitee (in exercising its rights and/or fulfilling its obligations here under) is infringing the Intellectual Property Rights of such third party ("**Infringing Material**"), the indemnity set out in these Terms and Conditions shall be subject to the Indemnitor first being entitled (at its cost) either to:

- (a) procure for the Indemnitee the right to continue using the Infringing Material;
- (b) modify or amend the Infringing Material so that the same becomes non-infringing (but still substantially as envisaged in these Terms and Conditions); or
- (c) replace the Infringing Material so that, in each case, no further infringement continues.

10.4 Without prejudice to any other rights or remedies, a party shall not be liable for any delay or failure to perform its obligations or to provide accurate information under these Terms and Conditions provided such failure is directly and identifiably attributable to the acts and omissions of the other party.

10.5 If Staff Smarter's performance of its obligations under these Terms and Conditions is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, Staff Smarter shall not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay.

10.6 Nothing in these Terms and Conditions excludes the liability of either Party:

- (a) for death or personal injury caused by a party's negligence;
- (b) for fraud or fraudulent misrepresentation; or
- (c) for any other liability which cannot be limited under applicable law.

10.7 Subject to clause 10.6, neither party shall be liable to the other in connection with these Terms and Conditions (whether in contract, tort or negligence) for any loss of profits, loss of business, depletion of goodwill, loss of data, or for any, indirect or consequential loss or damage however arising.

10.8 Subject to clause 10.6, in no event shall Staff Smarter's aggregate liability for all events arising in each year during the Term of these Terms and Conditions (whether in contract, tort, negligence or otherwise) exceed 100% of the net fees received by Staff Smarter from the Client in the 12 months preceding any liability hereunder.

## **11. COMMENCEMENT AND DURATION**

11.1 These Terms and Conditions shall commence on the Effective Date and shall continue for the Term, unless terminated by either party at any time with no less than fourteen (14) days' prior written notice.

11.2 A party may terminate the Term of these Terms and Conditions, by written notice to the other Party and with immediate effect where:

- (a) the other party commits any material breach of these Terms and Conditions, provided that where the breach is capable of remedy, such breach is not remedied within 30 (thirty) days of notice of the breach; or

- (b) the other party: (i) is unable to pay its debts; (ii) is the subject of a petition, order, or resolution in connection with winding up, whether solvent or insolvent, or ceases or threatens to cease to carry on all or a material part of its business; (iii) has a receiver, administrator or examiner appointed over all or any part of its assets; (iv) suffers or is subject to any analogous event or procedure to those set out above in any jurisdiction; or (v) suspends or ceases or takes any action to cease, to carry on, all or a substantial part of its business.

## **12. TERMINATION**

12.1 On termination of these Terms and Conditions, both parties shall pay to the other all amounts properly due hereunder for the provision of the Staff Smarter Platform in accordance with these Terms and Conditions;

12.2 On the expiry or earlier termination of these Terms and Conditions, Staff Smarter shall reasonably co-operate with the Client at the Client's expense to assist an orderly migration of services provided hereunder to a replacement supplier as the Client may direct.

12.3 Termination or expiry of these Terms and Conditions (however it occurs) does not affect the accrued rights and liabilities of the parties or the enforceability of any other provisions of these Terms and Conditions that are intended to remain in force after its termination or expiry.

12.4 On expiry or termination of the Term or the Pilot Term of these Terms and Conditions:

- (a) each party shall, return any and all of the other party's equipment, materials and deliverables then in its possession. Should such party fail to do so, then the other party may enter the defaulting party's premises and take possession of them;
- (b) all rights and licences granted here under shall cease at the date of expiry or termination of these Terms and Conditions;
- (c) subject always to clause 13, each party shall within thirty (30) days of the date of expiry or termination of these Terms and Conditions return to the other all of the other party's Confidential Information together with any copies made thereof, including copies in all forms, partial and incomplete, on any types of media and in any computer memory, and (if requested in writing) certify to the other party in writing that it has strictly complied with this obligation and has not retained any copies of the other party's Confidential Information;
- (d) except as specifically provided for in these Terms and Conditions, each party's further rights and obligations shall cease immediately on termination of these Terms and Conditions and the parties shall make any reassignments necessary to achieve this, but

termination does not affect either party's accrued rights and obligations as at the date of termination; and

- (e) clauses which by their terms or intent are to survive termination of these Terms and Conditions will do so.

### **13. DATA PROTECTION**

13.1 To the extent that a party processes End User Personal Data under or in connection with these Terms and Conditions, each such Party undertakes and agrees to comply with their obligations under the Data Protection Legislation.

13.2 To the extent that Staff Smarter is a Processor of End User Personal Data, Staff Smarter shall:

- (a) process Personal Data only on the Client's documented instructions, and not for any other purpose, or in any other manner, unless specifically instructed by the Client in writing to do so, or as required by the Data Protection Legislation. In the event that Staff Smarter is required by the Data Protection Laws to process End User Personal Data for any other purpose or in any other manner, Staff Smarter shall notify the Client of that legal requirement before processing, unless that law prohibits such notification on important grounds of public interest;
- (b) ensure that its employees, agents and/or sub-processors authorised to process Personal Data have committed themselves to confidentiality;
- (c) implement appropriate technical and organisational security measures to safeguard End User Personal Data. The Client acknowledges and agrees that it has knowledge of and has reviewed these measures and is responsible for ensuring that they provide an appropriate level of protection to the risks of End User Personal Data to be processed; and
- (d) be permitted to appoint a sub-processor to process Personal Data provided that: (i) Staff Smarter enters into a written contract with the sub-processor on the equivalent terms to those set out in this clause 13; (ii) Staff Smarter shall inform the Client of any intended changes concerning the addition or replacement of any sub-processor; and (iii) where a sub-processor fails to fulfil its data protection obligations, Staff Smarter shall remain fully liable to the Client for the performance of the sub-processor's obligations.

13.3 Taking into account the nature of the processing, Staff Smarter shall provide commercially reasonable assistance to the Client for the fulfilment of the Client's obligation to respond to a request from an End User to exercise such End User's rights under the Data Protection Legislation. To the extent legally permitted, the Client shall be responsible for any costs arising from Staff Smarter's provision of such assistance.

13.4 Staff Smarter shall notify the Client without undue delay after becoming aware of a Personal Data Breach and provide commercially reasonable assistance to the Client in connection with its third-party notification and communication obligations under the

Data Protection Legislation, taking into account the nature of the processing and the information available to the Client. To the extent legally permitted, the Client shall be responsible for any costs arising from Staff Smarter's provision of such assistance.

13.5 Except where Staff Smarter is required to do so in accordance with the Data Protection Legislation, Staff Smarter shall not transfer any End User Personal Data out of the European Economic Area to any country that has not been identified by the European Commission or a Supervisory Authority under the Data Protection Legislation as a country that provides an adequate level of data protection except: (a) on the Client's prior written approval, or (b) where Staff Smarter has ensured adequate safeguards for such End User Personal Data, as required by the Data Protection Legislation, such as by ensuring that any transfer of such End User Personal Data is governed by the applicable EU Standard Contractual Clauses.

13.6 Staff Smarter shall make available to the Client information necessary to demonstrate compliance with the obligations in this clause 13.

#### **14. PERSONNEL**

14.1 The Client warrants and represents that neither the provision of the Staff Smarter Platform, Staff Smarter entering into these Terms and Conditions, nor Staff Smarter's performance of any of its obligations here under shall result in:

- (a) the contract of employment of any person having effect as if originally made between that person and Staff Smarter, or being assigned to Staff Smarter by operation or contract, law or otherwise; or
- (b) Staff Smarter being responsible for any liabilities arising under a contract of employment or its termination, in each case, pursuant to the Employment Regulations.

14.2 If:

- (a) the contract of employment (or alleged contract of employment) of any person is found or alleged to have effect as if originally made between that person and Staff Smarter or being assigned to Staff Smarter by operation or contract, law or otherwise; or
- (b) Staff Smarter is found or alleged to be responsible for any liabilities (or alleged liabilities) arising under a contract of employment (or alleged contract of employment) or its termination (or alleged termination), in each case, pursuant to the Employment Regulations, the Client shall indemnify Staff Smarter against any and all losses and/or liabilities that Staff Smarter may occur in relation to or in connection with the same, including, but not limited to, any losses and liabilities that may arise from or in connection with any contract of employment (or alleged contract of employment) and its termination.

#### **15. CONFIDENTIALITY**

15.1 The parties both warrant and represent that they will keep confidential all Confidential Information disclosed to them by the other party, in particular any Staff Smarter Materials disclosed to Client and any Client Content provided by the Client to Staff Smarter.

15.2 The obligations of confidentiality in this clause 15 will not apply to any matter that:

- (a) is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under these Terms and Conditions or any other obligations of confidentiality;
- (b) was independently disclosed to it by a third party entitled to disclose the same; or
- (c) was already known to the recipient before receipt from the other party, provided always that the aforementioned exclusions shall not apply to the extent that the Confidential Information comprises End User Personal Data.

15.3 Both parties must establish and maintain such security measures and procedures as are reasonably practicable to provide for the safe custody of the Confidential Information.

15.4 Either party will only store, copy or use the other's Confidential Information to the extent necessary to perform its obligations under these Terms and Conditions.

15.5 Each recipient may disclose Confidential Information as may be required by law, regulation or order of a competent authority to be disclosed, or as reasonably required to be disclosed to a professional adviser of the recipient, provided that, to the extent practicable in the circumstances, the disclosing party is in each case given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same to the owner of such Confidential Information.

15.6 Each party will return to the other party on demand any and all Confidential Information disclosed and/or made available to the receiving party or destroy the same and shall at the disclosing party's request certify that all such Confidential Information has been returned or destroyed as requested. Upon the expiry or termination of these Terms and Conditions, each party will return to the other party, or destroy (and confirm such destruction in writing), all Confidential Information disclosed to the other party further to these Terms and Conditions(as applicable).

## **16. NOTICES**

16.1 Any notice given to a party under or in connection with these Terms and Conditions shall be in writing and in English and shall be delivered by hand or by pre-paid first-class post to the following addresses:

- (a) to Staff Smarter at: Florence, 32-38 Leman St, E1 8EW
- (b) to the Client at the address provided as the main contact point on the Staff Smarter Platform.

16.2 Any notice shall be deemed to have been delivered:

- (a) if sent by hand, when delivered;
- (b) if by first class post, five (5) days after posting; and
- (c) if by e-mail, as soon as the e-mail was sent, unless the party sending the notice knows or ought reasonably to suspect that the e-mail was not delivered to the receiving party's e-mail address.

## **17. MISCELLANEOUS**

17.1 Nothing in these Terms and Conditions is intended to, or shall be deemed to, establish an exclusive relationship, any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

17.2 Neither party shall assign its rights under these Terms and Conditions either in whole or in part without the prior written consent of the other party, save that Staff Smarter may be entitled to assign these Terms and Conditions to any affiliate or group company or in connection with a merger or business sale of its assets.

17.3 No failure or delay by a party to exercise any right or remedy provided under these Terms and Conditions 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. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17.4 These Terms and Conditions, together with the documents referred to in it contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing.

17.5 If any provision or part-provision of these Terms and Conditions 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 clause shall not affect the validity and enforceability of the rest of these Terms and Conditions.

17.6 Except as expressly provided in these Terms and Conditions, a person who is not a party to these Terms and Conditions shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms and Conditions.

17.7 These Terms and Conditions 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 & Wales.

17.8 The parties agree that the courts of London, England will have exclusive jurisdiction to decide any matter relating to the enforcement or construction of these Terms and Conditions.