



TERMS OF BUSINESS

PARTIES:

- (1) **UNMATCHED DIGITAL LIMITED** is a limited company registered in England (company no. 14181556), with its registered address at Unit 16, The Vision Centre, 5 Eastern Way, Bury St. Edmunds, England, IP32 7AB, specialising in assisting businesses with HubSpot and inbound marketing (“**Unmatched**” / “**we**” / “**us**”); and
- (2) You are a **CUSTOMER** (the “**Customer**” / “**you**”) who has engaged Unmatched to provide services on the terms set out in this agreement (“**Agreement**”).

1. DEFINITIONS

1.1 In this Agreement, the following definitions apply:

We will provide you with the agreed Services:	“Services” : the provision of: (i) consultancy services in relation to the HubSpot platform; (ii) outsourced support services in relation to the HubSpot platform; (iii) digital transformation; (iv) customer relationship management; (v) digital marketing; and/or (vi) other business consultancy services, to be provided by Unmatched to you as specified in a Proposal.
The Services will either be one of, or a combination of:	“Project Based Work” : the Services specified in a Proposal to be provided on a project by project basis (without any ongoing commitment); “Retainer Services” : the Services specified in a Proposal to be provided on an ongoing retainer basis; and/or “Additional Services” : any Services that are not included within the scope of a Proposal, that are agreed by the parties in writing from time to time.
Various materials may be required to be provided or produced as part of the Services:	“Background IPR” : any Intellectual Property Rights owned by, licensed to or otherwise controlled by a party prior to the Start Date or created or acquired after the Start Date other than directly pursuant to the provision of the Services. “Customer Materials” : all information, text, graphics, photos, designs, data, content and materials provided by you to Unmatched for use in the provision of the Services and/or creation of the Deliverables. “Deliverables” : all social media content, text, graphics, images, artwork, designs, documents, content and materials, websites, software applications, HubSpot configuration, or any other electronic content (including drafts) created or provided by Unmatched to you in relation to the Services in any media, as specified in a Proposal. “Intellectual Property Rights” : any patents, copyright, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs (whether registered or unregistered) database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other registered or unregistered intellectual property rights or industrial property rights in any part of the world.
You will pay us the Fees set out in a Proposal:	“Fees” : any fees payable by you to Unmatched under this Agreement, as set out in the applicable Proposal. “Proposal” : a proposal document, ‘scope of work’, ‘Terms and Pricing Document’, payment schedule, order form or other statement of work document detailing the Services, Fees and Deliverables to be provided by Unmatched to you, as agreed by both parties in writing.

1. ENGAGEMENT & BASIS OF THE CONTRACT

- 1.1 This Agreement will be deemed to be accepted by you and will be effective on the earlier of:
 - 1.1.1 the second party signing a Proposal; or
 - 1.1.2 you using any of the Services after receipt of this Agreement, on which date this Agreement will come into existence (“**Start Date**”) and will continue in force until terminated in accordance with its terms.
- 1.2 In the event of conflict between any part of this Agreement and the applicable Proposal, the Proposal will take precedence.
- 1.3 This Agreement will apply to the exclusion of any other terms that you seek to impose or incorporate, or which are contained in, or referred to in, prior correspondence with us, or implied by law, trade custom, practice or course of dealing.
- 1.4 Subject to clauses 12.2 and 12.3, you acknowledge that this Agreement will apply to all current and future dealings between the parties relating to its subject matter.
- 1.5 In this Agreement, unless the context requires otherwise, the following provisions apply:
 - 1.5.1 clause headings are for reference purposes only and shall not affect the interpretation of the clause;
 - 1.5.2 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
 - 1.5.3 the terms ‘including’, ‘include’, ‘in particular’ or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
 - 1.5.4 a reference to ‘writing’ or ‘written’ includes email unless stated otherwise, but not faxes.

2. OUR OBLIGATIONS

- 2.1 **Performance Standards.** Unmatched shall provide the Services to you using reasonable care and skill and Unmatched shall use reasonable efforts to provide the Services to you in accordance with the applicable Proposal. Unmatched does not warrant nor guarantee any specific level of performance. The examples of results shown in our case studies are solely for marketing and demonstrative purposes, in no way should they be construed as providing a guarantee of any level of performance and/or result.
- 2.2 **Service Timeframes.** Unmatched shall use reasonable efforts to complete the Services within any timeframe agreed with you, but for the avoidance of doubt, any timeframes are estimates only and time shall not be ‘of the essence’ for the performance of the Services.

Unmatched will not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Services.

- 2.3. Services Warranty Period. If any part of the Services is performed negligently or in breach of a provision of this Agreement (and Unmatched agrees with this determination), then, at your request, Unmatched shall re-perform the relevant part of the Services.

3. CUSTOMER OBLIGATIONS

- 3.1. From time-to-time Unmatched may request that you provide Unmatched with certain Customer Materials, further information or assistance to enable Unmatched to fully provide the Services and you agree that this will be promptly provided to Unmatched.
- 3.2. You must ensure the accuracy of all such Customer Materials or information provided to Unmatched.
- 3.3. If Unmatched is unable to perform its obligations to you under this Agreement because we have been prevented or delayed by you (or a third party acting on your behalf), such as by your failure to do something requested of it:
- 3.3.1. Unmatched shall have no liability in respect of any delay to the completion of the Services; and
- 3.3.2. if applicable, the timetable for the Services will be modified accordingly.
- 3.4. Unmatched may, in their sole discretion, charge you for any additional reasonable costs and expenses incurred by Unmatched caused by your instructions, your failure to provide instructions or your failure to comply with this clause 3.
- 3.5. You hereby confirm that you have all the necessary rights and ownership in Customer Materials to permit Unmatched to use them for the provision of the Services without infringing any third-party Intellectual Property Rights.
- 3.6. You will check that the terms of each Proposal and any other information provided by Unmatched are correct and accurately reflect your requirements. The parties acknowledge and agree that anything that is not expressly mentioned in a Proposal is not included within the scope of the Services to be provided. In the event that you wish to change the scope of a Proposal, any changes will need to be agreed with Unmatched in writing (subject to our approval) and in the event that you request Additional Services and Unmatched agree to perform them, an additional Proposal shall be completed for the applicable Additional Services.
- 3.7. You agree to solely communicate with Unmatched via email and/or any communication channels expressly agreed by the parties in a Proposal.
- 3.8. You warrant that you have the legal right and authority to enter into and adhere to the terms of this Agreement.

4. FEES AND PAYMENT

- 4.1. The Fees for the supply of the Services will be set out in the applicable Proposal.
- 4.2. Unmatched shall send you an invoice:
- 4.2.1. for 50% of the Fees before any Project Based Works commence and for the remaining 50% of the Fees upon completion of the provision of the Project Based Works; and
- 4.2.2. at the end of each calendar month for the provision of Retainer Services, and you must pay each invoice within 30 days of the date of the invoice or as otherwise specified in the applicable Proposal.
- 4.3. VAT and any expenses to be incurred will be shown separately on all invoices (where applicable).
- 4.4. For Retainer Services only, you agree to set-up and maintain a direct debit facility with Unmatched and all invoices shall be paid by direct debit unless otherwise agreed by the parties in writing.
- 4.5. You will not be entitled to set-off, counterclaim, deduct or withhold payment under this Agreement.
- 4.6. If any expenses are required (including travel and accommodation), Unmatched will obtain your email approval before we incur such expenses.
- 4.7. Unmatched reserves the right to increase the Fees on an annual basis with effect from each anniversary of the Start Date in line with the Consumer Price Index (as published by the Office of National Statistics in the United Kingdom) plus 5%.
- 4.8. If you do not pay an invoice issued to you by the relevant due date, Unmatched reserves the right to take the following actions:
- 4.8.1. charge interest on any outstanding sums from the due date for payment in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment;
- 4.8.2. deleting or disposing of any Deliverables that Unmatched may hold on your behalf. Please note that Unmatched will not be responsible for any loss or damage you may suffer as a result of any deletion or disposal; and/or
- 4.8.3. suspending the Services that Unmatched provides to you. We will not be liable for any loss of data that may occur in relation to the suspension of the Services, and you agree to reimburse Unmatched for any debt recovery costs incurred in relation to each outstanding payment.
- 4.9. We may set-off any liability that you may have to us against any liability that Unmatched may have to you.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1. You hereby grant Unmatched a non-exclusive, perpetual, irrevocable, transferable, royalty-free, worldwide licence to use the Customer Materials solely for use in the provision of the Services and/or the creation and use of the Deliverables.
- 5.2. You acknowledge and agree that in the event that any Deliverables created by Unmatched have general application to the HubSpot platform (and could benefit multiple customers), any related Intellectual Property Rights in such Deliverables will vest, and remain with, Unmatched ("General IP").
- 5.3. Subject to clause 5.2, upon payment of the full Fees, Unmatched hereby assigns to you absolutely all its right, title and interest in and to the Deliverables, excluding any Background IPR. Following this assignment, you hereby grant Unmatched a non-exclusive, perpetual, irrevocable, transferable, royalty-free, worldwide licence to use the Deliverables for its commercial purposes.
- 5.4. Any Background IPR and General IP is licenced by Unmatched to you on a non-exclusive, perpetual, irrevocable, transferable, royalty-free, worldwide licence solely for your reasonable use of the Deliverables.
- 5.5. You will indemnify and keep Unmatched and its officers, employees, consultants, agents and sub-contractors indemnified, on demand, against all losses, costs and liabilities and all expenses, including reasonable legal or other professional expenses, suffered or incurred by Unmatched arising out of or in connection with any claim:
- 5.5.1. in relation to Customer Materials or any Deliverables infringing a third party's Intellectual Property Rights;
- 5.5.2. in relation to any information provided by you or the Customer Materials being inaccurate or incomplete; and/or
- 5.5.3. for any defamatory, offensive or illegal content, information or materials provided by you either directly or indirectly to us.
- 5.6. You acknowledge that Unmatched and its personnel may use any non-confidential details of the Services and the Deliverables for a number of purposes, including for use in our portfolio, samples, case studies, publications, exhibitions, competitions, advertisements and other promotional purposes (such as use in print and on our website and/or social media channels). In the event Client wishes to exclude some specific materials from the release under this clause, or to limit the time period of such release, the parties must mutually agree this in advance in writing. You hereby permit Unmatched and other associated parties to publish your name and standard logo.

6. CONFIDENTIALITY

- 6.1. A party ("**Receiving Party**") will keep in strict confidence all technical or commercial know-how, processes, plans or initiatives which are of a confidential nature and have been disclosed (either orally, in writing or by demonstration) to the Receiving Party by the other party ("**Disclosing Party**") or its employees, agents or sub-contractors and any other confidential information concerning the Disclosing Party's business, marketing, sales programs, sales volume, sales conversion rates, sales methods and processes, sales proposals, products, services, vendors, customer lists, training manuals, sales scripts, telemarketing scripts, names of investors, and customer information, operating procedures, pricing policies, strategic plans, API keys, tokens, private apps, data files, trade secrets, information about the Disclosing Party's employees and other confidential or proprietary information belonging to or related to the Disclosing Party's affairs which the Receiving Party may obtain ("**Confidential Information**"). The Terms of this Agreement and any Proposal are also deemed to be Confidential Information.
- 6.2. In relation to any Confidential Information received from the Disclosing Party or from a third party on behalf of the Disclosing Party, the Disclosing Party and the Receiving Party agree:
 - 6.2.1. to treat the Confidential Information in confidence and to use it only for the purpose of discharging the Receiving Party's obligations under this Agreement;
 - 6.2.2. not to disclose the Confidential Information to any third party without the express written permission of the Disclosing Party (except that the Receiving Party may disclose the Confidential Information to its officers, employees, consultants, agents and sub-contractors who need access to the Confidential Information in connection with discharging the Receiving Party's obligations under this Agreement and provided that such officers, employees, consultants, agents and sub-contractors are made aware of the confidential nature of the Confidential Information and are subject to confidentiality obligations at least as onerous as those set out in this Agreement); and
 - 6.2.3. to treat the Confidential Information with the same degree of care and with sufficient protection from unauthorised disclosure as the Receiving Party uses to maintain its own confidential or proprietary information.
- 6.3. Nothing in this Agreement will prevent the Receiving Party from using or disclosing any Confidential Information which:
 - 6.3.1. is in or comes into the public domain in any way without breach of this Agreement by the Receiving Party or any person or entity to whom it makes disclosure;
 - 6.3.2. the Receiving Party can show was: (i) in its possession or known to it by being in its use or being recorded in its files prior to receipt from the Disclosing Party and was not acquired by the Receiving Party from the Disclosing Party under an obligation of confidence; or (ii) to have been independently developed by the Receiving Party without reference to the Confidential Information;
 - 6.3.3. the Receiving Party obtains or has available from a source other than the Disclosing Party without breach by the Receiving Party or such source of any obligation of confidentiality or non-use;
 - 6.3.4. is disclosed by the Receiving Party with the prior written approval of the Disclosing Party; or
 - 6.3.5. is required by law to be released (e.g. by a court order), provided that, when permitted by the applicable law, the Disclosing Party is given as much prior written notice as possible of such request.
- 6.4. Upon the termination of this Agreement (or earlier, upon the request of the Disclosing Party) the Receiving Party must delete, destroy or return (at the Disclosing Party's option) all of the Disclosing Party's Confidential Information to the Disclosing Party promptly (and no later than 14 days of the effective date of termination or the Disclosing Party's request (as applicable)).
- 6.5. The Receiving Party acknowledges and agrees that in any proceeding to enforce this Agreement it will be presumed that the Confidential Information constitutes protectable trade secrets and that the Receiving Party will bear the burden of proving that any portion of the Confidential Information was publicly or rightfully known and disclosed by the Receiving Party.
- 6.6. The parties acknowledge that the Confidential Information exchanged is valuable and unique and that disclosure in breach of this Agreement could result in irreparable injury to the adversely Disclosing Party, for which monetary damages, on their own, may be inadequate. Accordingly, the parties agree the Disclosing Party shall have the right to seek an immediate injunction enjoining any such breach or threatened breach of this Agreement.
- 6.7. This clause 6 shall survive termination of this Agreement, however arising.

7. DATA PROTECTION

- 7.1. General Obligations. Each party will ensure that in the performance of its obligations under this Agreement it will at all times comply with all applicable data protection and privacy laws and regulations, including, without limitation, the Data Protection Act 2018 and the UK General Data Protection Regulation (EU Retained Regulation 2016/679), and to the extent applicable, the data protection or privacy laws of any other country ("**Data Protection Laws**"). For the purposes of this clause 7, the terms Personal Data, Data Controller and Data Processor shall have the meanings given to them in Data Protection Laws.
- 7.2. Data Specification. You must provide Unmatched with a document setting out the: (a) subject matter and duration of any processing to be undertaken by Unmatched; (b) the nature and purpose of the processing; and (c) the type of Personal Data and the categories of data subject relevant to this Agreement. We have provided a default processing specification in Appendix 1, which will apply unless you provide us with your own processing specification.
- 7.3. Data Controller. You acknowledge and agree that you will be the Data Controller under this Agreement and that it will be responsible for adequately addressing the use of cookies and data protection obligations in its end-customer / client terms & conditions and policies. As Unmatched does not have any control over your data protection notices, policies and terms & conditions, you will indemnify and keep Unmatched and its Affiliates indemnified against all losses, costs, and liabilities and all expenses, including reasonable legal or other professional expenses, suffered or incurred by Unmatched arising out of or in connection with any claim in respect of: (a) a breach of clause 7.1, 7.2 or 7.3; (b) any liability arising whatsoever in respect of the cookies on, or the capture of Personal Data through, your website(s); and (c) the consent of data subjects for the exportation of any Personal Data outside of the UK and/or European Economic Area by Unmatched under clause 7.6.
- 7.4. Data Processor. Unmatched acknowledges and agrees that it will be the Data Processor under this Agreement and that it shall: (a) keep all Personal Data it receives, stores and collects from you strictly confidential (pursuant to clause 6 (Confidentiality)), and not disclose any Personal Data to third parties; (b) not use the Personal Data for any purpose other than to perform its obligations under this Agreement; (c) ensure that all Personal Data it receives, stores and collects from you are processed in accordance with this Agreement or as otherwise instructed in writing from time to time by you and Unmatched shall not process the Personal Data for any other purpose, unless required by law to which Unmatched is subject, in which case Unmatched shall to the extent permitted by law inform you of that legal requirement prior to responding to the request; (d) promptly carry out any written request requiring Unmatched to amend, transfer or delete the Personal Data or any part of the Personal Data made by you during this Agreement; and (e) notify you without undue delay or in any case within 48 hours upon Unmatched or any sub-processor becoming aware of a breach affecting

Personal Data and at this time providing you with all sufficient information required to meet any obligation to notify the relevant data protection authority or inform affected individuals under applicable Data Protection Laws.

- 7.5. **Assistance.** Unmatched agrees to assist you with all subject access requests which may be received from an end-customer in a prompt timeframe (at your cost) and ensure that appropriate technical and organisational measures are in place to enable you to meet your obligations to those requesting access to Personal Data held by Unmatched. Upon request, Unmatched shall provide you with reasonably requested information within a reasonable timeframe to demonstrate its compliance with this clause 7. Unmatched shall assist you in relation to any data impact assessments and/or any prior consultation with the relevant data protection authority, provided that Unmatched shall be entitled to charge a reasonable fee for such assistance.
- 7.6. **Data Transfers.** Unmatched agrees not to transmit any Personal Data to a country or territory outside the UK and/or the European Economic Area without your prior written consent, provided that such consent is hereby deemed provided where the Personal Data is subject to an adequate level of protection in accordance with Data Protection Laws (which may include Unmatched implementing an International Data Transfer Agreement).
- 7.7. **Return of Data.** Upon the termination or expiry of this Agreement for any reason, Unmatched shall return all Personal Data to you as requested by you in writing, provided that this shall not prevent Unmatched from retaining a copy to meet its legal or regulatory obligations.
- 7.8. **Safeguards.** Taking into account the state of the art, the costs of implementation, and the nature, scope, context and purpose of processing as well as the varying risks to rights and freedoms of natural persons, the parties warrant that for the duration of this Agreement they will implement administrative, technical and physical safeguards sufficient to ensure the security and confidentiality, and protect against the unauthorised or accidental destruction, loss, alteration, use, or disclosure, of Personal Data and other records and information of the end-customers or employees and to protect against anticipated threats or hazards to the integrity of such information and records.

8. LIABILITY

- 8.1. This clause 8 sets out the entire financial liability of each party (including any liability for the acts or omissions of its employees, agents and sub-contractors):
 - 8.1.1. arising under or in connection with this Agreement;
 - 8.1.2. in respect of any use made by you of the Services, the Deliverables or any part of them; and
 - 8.1.3. in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 8.2. All warranties, conditions and other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.
- 8.3. Nothing in this Agreement limits or excludes the liability of either party: (i) for death or personal injury which results from negligence; (ii) for any damage or liability incurred by a party as a result of fraud or fraudulent misrepresentation by the other party; (iii) under any indemnities in this Agreement; or (iv) for any other liability which cannot be limited or excluded by law.
- 8.4. Subject to clause 8.3:
 - 8.4.1. neither party will be liable for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
 - 8.4.2. each party's total liability to each other in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising under or in connection with this Agreement will be limited to the Fees paid or payable for the relevant Services provided to you by Unmatched giving rise to such liability in the preceding 12 months to the claim arising (to be calculated on a pro rata basis where the contract term is less than 12 months).
- 8.5. You hereby agree not to claim any damages in excess of the contractual limitations detailed in clause 8.4, whether directly or indirectly through claims by or against other parties.
- 8.6. Whilst Unmatched will use reasonable endeavours to make sure that any Customer Materials you provide to us are not lost or damaged, we will not be responsible or liable for any loss or damage that may occur to them.

9. TERM AND TERMINATION

- 9.1. The Services shall commence on the Start Date (or such other date specified in the applicable Proposal).
- 9.2. **Project Based Work** shall continue for the period stated in the applicable Proposal. For the avoidance of doubt, should you wish to terminate the Project Based Work before completion, Unmatched shall not have any obligation to repay any charges paid by you.
- 9.3. **Retainer Services** shall continue for the initial term specified in a Proposal (either three months, six months or 12 months) ("**Initial Term**") and will automatically renew for successive periods equal to the Initial Term (each a "**Renewal Period**") unless either party serves the other party with written notice to terminate the Retainer Services by giving no less than one month's notice, which shall take effect at the end of the Initial Term or the end of the applicable Renewal Period (as applicable).
- 9.4. This Agreement may be terminated by either party for convenience with immediate effect at any time upon providing the other party with written notice, provided that there is not a Proposal in effect at that time.
- 9.5. Without limiting any other rights or remedies, either party ("**Terminating Party**") may terminate this Agreement with immediate effect by providing written notice to the other party ("**Defaulting Party**") on or at any time after the occurrence of any of the events specified below:
 - 9.5.1. a breach by the Defaulting Party of its obligations under this Agreement which (if the breach is capable of remedy) the Defaulting Party has failed to remedy within 14 days after receipt of notice in writing from the Terminating Party requiring the Defaulting Party to do so; or
 - 9.5.2. an event, including (or similar in nature to) the following: (i) the Defaulting Party is unable to pay its debts as they fall due; (ii) the Defaulting Party goes into liquidation either compulsorily (except for the purpose of reconstruction or amalgamation) or voluntarily; (iii) a receiver is appointed in respect of the whole or any part of the Defaulting Party; or (iv) a provisional liquidator is appointed to the Defaulting Party or the Defaulting Party enters into a voluntary arrangement or any other composition or compromise with the majority by value of its creditors or has a winding-up order or passes a resolution for the voluntary winding-up or has an administrative receiver appointed or takes steps towards any such event; or
 - 9.5.3. the Defaulting Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 9.6. If this Agreement terminates for any reason:
 - 9.6.1. any Proposal in force at the time of termination relating to the terminated Services will automatically terminate;
 - 9.6.2. Unmatched shall not have any obligation to repay any charges paid by you; and

- 9.6.3. notwithstanding any other provision, all charges payable by you to Unmatched under this Agreement will become due and payable immediately. This clause is without prejudice to any right by Unmatched to claim for interest or any other right under this Agreement.
- 9.7. Termination of this Agreement will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of a breach of this which existed at, or before, the effective date of termination.
- 9.8. Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.
- 10. FORCE MAJEURE**
- 10.1. Neither party shall be liable for any failure to perform its obligations under this Agreement if such failure results from circumstances which could not reasonably be contemplated at the time of entering into this Agreement and which are beyond the parties' reasonable control (including without limitation, acts of God, strikes, lock-outs or other industrial disputes (involving the workforce of Unmatched), failure of a utility service or transport network, war, riot, civil commotion, terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, epidemic, pandemic, accident, fire, flood, storm or default of suppliers or sub-contractors) (a "**Force Majeure Event**").
- 10.2. If a Force Majeure Event under this clause 10 continues for a period of 30 days or more, either party may terminate this Agreement immediately upon providing the other party with written notice.
- 11. NON-SOLICITATION**
- 11.1. During the term of this Agreement and for a period of 12 months from the date of termination, you shall not (except with the prior written consent of Unmatched) directly or indirectly solicit or entice away (or attempt to solicit or entice away) any employee, worker or independent contractor of Unmatched. You acknowledge and agree that the restrictions detailed in this clause 11.1 are reasonable and any failure to adhere to these restrictions will fundamentally undermine Unmatched's business model.
- 11.2. You shall not be in breach of clause 11.1 as a result of running a national advertising campaign open to all applicants and not specifically targeted at any of the staff of Unmatched.
- 11.3. If you commit a breach of clause 11.1, you will, without prejudice to any other rights or remedies of Unmatched, on demand, pay to Unmatched a sum equal to one year's basic salary or the annual fee that was payable by Unmatched to that employee, worker or independent contractor, plus the recruitment costs incurred by Unmatched in replacing such person.
- 12. MISCELLANEOUS**
- 12.1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 12.2. It may be necessary for Unmatched to update this Agreement and its terms from time to time. If you continue to use the Services after 14 days from the date that Unmatched has informed you of any amendments or additional terms to the Agreement, you will be deemed to have accepted these changes and they will be incorporated into this Agreement.
- 12.3. Subject to clause 12.2, no variation of this Agreement will be effective unless it is in writing and signed by both parties.
- 12.4. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law will constitute a waiver of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy.
- 12.5. You shall not, without the prior written consent of Unmatched, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under this Agreement. Unmatched may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 12.6. All notices under this Agreement must be in writing and will be deemed given when emailed to a valid email address of a party (with acknowledgement received from the receiving party) or mailed by registered or certified mail, return receipt requested, to the other party's main business address. Except as stated in this clause 12.6, serving notice by email or fax will not be accepted as an effective method of providing notice of a claim under this Agreement.
- 12.7. No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 12.8. Nothing in this Agreement is intended to, or will be deemed to, establish any partnership or joint venture between the parties, make a party the agent of the other party or authorise a party to make or enter into any commitments for or on behalf of the other party.
- 12.9. 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 clause shall not affect the validity and enforceability of the rest of this Agreement.
- 12.10. Each Proposal may be signed in counterparts. Each signed copy of a document will be deemed to be an original, but all signed copies, when taken together, will constitute one and the same agreement.
- 12.11. This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

APPENDIX 1 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. The parties will agree the Purpose of the Processing of Personal Data in this Appendix 1 in good faith.
2. The parties shall in good faith seek to agree to implement a process whereby the below table will be made available to Data Subjects and the circumstances where this will be provided.
3. The parties agree to review and update the below table in good faith as reasonably required from time to time.

Purpose Description	Details
Subject matter of the Processing	The provision of Unmatched Services where personal data is shared by the Customer to Unmatched, or which is otherwise processed by Unmatched under the Customer's instructions.
What date will sharing commence	At the commencement of the provision of the Services.
Categories of Data Subject	Customer employees including officers, volunteers, contractors, agents, temporary workers and customers.
Type of Personal Data (what categories are being shared)	Name, address, email, telephone number and job title.
Is there any sensitive/special categories of Personal Data being shared	N/A
Lawful grounds for sharing (if using consent, has it been collected and recorded correctly)	Contractual necessity to fulfil contractual obligations.
Duration of the Processing	The duration of this Agreement.
Data Retention Period	A period of 3 years.