

## **MADE UP LIMITED: GENERAL TERMS OF BUSINESS**

These Terms and Conditions apply to all agreements for the provision of Made Up Limited's services and shall apply in place of and prevail over any terms and conditions contained or referred to in any customer's documentation, or in correspondence or elsewhere or implied by trade custom, practice, or course of dealing, unless specifically agreed otherwise in writing by Made Up Limited. All Quotations and Order Forms are incorporated into, made subject to and are governed by these Terms and Conditions. Made Up Limited shall issue an Order Form, together with a form of these Terms and Conditions to all customers to be signed.

### **1 DEFINITIONS**

<b>"Additional Terms"</b>	means any additional terms applicable to the Services as set out in the Order Form.
<b>"Affected Party"</b>	has the meaning given to it in Condition 20.2.
<b>"Agreement"</b>	means the Order Form, these Terms and Conditions and any schedules or appendices attached hereto or that the parties may enter from time to time.
<b>"Client"</b>	means the entity named as the client in the Order Form.
<b>"Client Materials"</b>	means any and all documents, information, items, and materials, in any form, which are provided by the Client to Made Up in connection with this Agreement, whether during or as a result of the Services.
<b>"Commencement Date"</b>	means the date that the provision of the Services shall commence as set out in the Order Form.
<b>"Confidential Information"</b>	means all confidential information, including, without limitation, all confidential information disclosed or otherwise made available by or on behalf of Made Up to the Client (in whatever medium, including written, oral, visual or electronic form and whether before or after the date of this Agreement) and including all trade secrets, business, financial, commercial, customer, technical, operational, legal, management and marketing information.
<b>"Deliverables"</b>	means any outputs of the Services, whether specified in a Quotation, Order Form or otherwise.

<b>“Delivery Date(s)”</b>	means the agreed dates for delivery of the Deliverables, as set out in the Order Form.
<b>“Expenses”</b>	means the incidental expenses payable by the Client to Made Up as set out in the Order Form.
<b>“Fee(s)”:</b>	means the Fees payable by the Client to Made Up as set out in the Order Form.
<b>“Force Majeure Event”</b>	has the meaning given to it in Condition 20.1.
<b>“Insolvency Event”</b>	has the meaning given to it in Condition 13.2.2.
<b>“Installation Date”</b>	means the agreed dates for the installation of the Deliverables, as set out in the Order Form.
<b>“Intellectual Property Rights”</b>	means all intellectual property rights of whatever nature and wherever in the world arising including without limitation rights in trade marks (whether registered or unregistered), service marks, trade secrets and know how, domain names, inventions, patents, registered designs, design rights, copyright and related rights (in the case of Made Up, this includes the Made Up Works, and, in the case of the Client, this includes the Client Materials), whether such rights are registered or unregistered and including applications for and renewals and extensions of such rights and all similar or equivalent rights or forms of protection in any part of the world whether currently existing or created in the future, together with the right to sue for and recover damages or other relief in respect of infringement of any such rights.
<b>“Made Up”</b>	means Made Up Limited, a private limited company incorporated and registered in England & Wales, with its registered office address at 107 Bell Street, London, NW1 6TL (company number: 04947008).
<b>“Made Up Works”</b>	means any and all documents, information, items and materials, designs, drawings, models, installations, stands, stages, builds, content, written advice or consultancy documentation or any other creative work, including the Deliverables, in whatever form, created, or produced by (or on behalf) of Made

Up in connection with this Agreement, whether during or as a result of the Services, including, for the avoidance of doubt, any Pitch and/or any materials created in relation to any Pitch.

<b>“Order Form”</b>	means the order for Services signed by the parties.
<b>“Payment Terms”</b>	means the terms on which the Fees shall be paid by the Client to Made Up as set out in the Order Form.
<b>“Pitch”</b>	means a pitch for the Services.
<b>“Purpose”</b>	means for the purpose of Made Up providing the Services to the Client for the Project as set out in the Order Form.
<b>“Quotation”</b>	means the quotation for the Services issued by Made Up.
<b>“Project”</b>	means the project to which the Services relate as set out in the Order Form.
<b>“Project Manager(s)”</b>	means the respective individuals appointed by Made Up and the Client for managing the Project.
<b>“RAMS”</b>	has the meaning given to it in Condition 6.3.
<b>“Services”</b>	means the services to be provided by Made Up to the Client as specified in the Order Form.
<b>“Site”</b>	means the address provided by the Client and stated in the Order Form, whereby Made Up shall deliver the Services.
<b>“Term”</b>	means the Term of the Agreement as set out in the Order Form.
<b>“Terms and Conditions”</b>	means these terms and conditions.

## 2 INTERPRETATION

2.1 In this Agreement the following rules of interpretation shall apply:

- 2.1.1 capitalised terms used in the Order Form shall be defined terms for the purposes of these Terms & Conditions and shall have the meaning ascribed to them in the Order Form; and
- 2.1.2 words such as, **including, particularly** and similar expressions are not used as, nor are intended to be, interpreted as words of limitation.

### 3 **DURATION**

This Agreement shall commence on the Commencement Date and shall (subject to earlier termination as provided for under this Agreement) continue in full force and effect for the Term, following which it may be renewed for subsequent periods on agreement between the parties in writing.

### 4 **ORDERS**

4.1 All orders for Services must be in writing via the Order Form. A Quotation for the Services shall not constitute an offer. A Quotation shall only be valid for a period of fourteen (14) days from its date of issue.

4.2 Any Quotation, telephone or email order shall only be deemed accepted once Made Up has issued an Order Form, together with these Terms & Conditions.

4.3 Each Quotation and Order Form is made under and is subject to these Terms & Conditions. In the event of any conflict between the Quotation, Order Form and the Terms & Conditions, the Terms & Conditions shall prevail.

4.4 Each Order Form shall be agreed as follows:

4.4.1 the Client shall ask Made Up to provide the Services and shall provide Made Up with all information requested to enable Made Up to prepare a draft Order Form;

4.4.2 Made Up shall, as soon as reasonably practicable, either:

(a) inform the Client that it declines to provide the Services; or

(b) provide the Client with a draft Order Form.

4.4.3 If Made Up provides the Client with a draft Order Form pursuant to clause 4.4.2(b), Made Up and the Client shall discuss and agree the terms of the Order Form and shall sign the draft Order Form once agreed.

### 5 **MADE UP'S RESPONSIBILITIES**

5.1 Made Up shall use reasonable endeavours to supply the Services to the Client in accordance with this Agreement in all material respects. For the purposes of this Agreement, delivery of the **"Services"** shall include the delivery of any specific Deliverables which are outputs of the Services specified in the Order Form.

5.2 Made Up shall perform the Services with reasonable skill and care and shall use suitably competent personnel.

5.3 Made Up shall use reasonable endeavours to meet the Installation Date and any other Delivery Dates specified in the Order Form, but time for performance by Made Up shall not be of the essence of this Agreement.

5.4 Made Up shall appoint a manager for the Services, identified in the Order Form as the Project Manager. The Project Manager shall have authority to contractually bind Made Up on all matters relating to the Services. Made Up may replace that person from time to time where reasonably necessary in the interests of Made Up's business.

5.5 Made Up shall use reasonable endeavours to observe all health and safety and security requirements communicated to it and at the Client 's premises where it is providing the Services, provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.

## 6 CLIENT'S OBLIGATIONS

6.1 The Client shall:

6.1.1 co-operate with Made Up in all matters relating to the Services;

6.1.2 appoint a Project Manager (as set out in the Order Form) that shall have the authority to contractually bind the Client on matters relating to the Services;

6.1.3 provide, for Made Up, its agents, subcontractors, consultants, and employees, in a timely manner and at no charge, access to the Site (whether such Site is at the Client's premises or not) as required by Made Up (including, for the RAMS, as defined in Condition 6.3);

6.1.4 provide to Made Up promptly all documents, information, items, and materials in any form (whether owned by the Client or third party) required by Made Up in connection with the Services and ensure that it is up-to-date, accurate and complete;

6.1.5 promptly provide all answers to queries, decisions and approvals which are reasonably required by Made Up for the performance of the Services as specified in the Quotation;

6.1.6 inform Made Up of all health and safety and security requirements that apply at the Site;

6.1.7 obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable Made Up to provide the Services, according to the Delivery Dates and any other timeline as may be required for Made Up to deliver the Services;

6.1.8 inform any and all relevant parties of the agreed Payment Terms as set out in the Order Form;

6.1.9 ensure that the Site is ready (both as regards condition and availability) for Made Up to perform the Services, in accordance with the Order Form and as may otherwise be directed by Made Up to the Client; and

6.1.10 insure the Deliverables at the Site and ensure that the Deliverables are provided for use with safety instructions and are not used for any purpose for which the Deliverables are not designed.

6.2 If Made Up's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants, or employees, then, without prejudice to any other right or remedy it may have, Made Up shall be permitted an extension of time to perform its obligations equal to the delay caused by the Client.

6.3 The Client acknowledges that there are circumstances where it will not be appropriate for any Deliverables to be installed or taken down, as set out in more detail in the Risk Assessment and Method Statement ("**RAMS**") for the Project. The decision as to whether to install or take down such Deliverables is entirely at the discretion of Made Up, acting in good faith and taking account

of the circumstances, (including, without limitation: applicable risk, weather, and environmental factors).

- 6.4 Made Up may make recommendations to the Client on the basis of the RAMS but shall not be responsible for any decision taken by the Client on the basis of such RAMS. In the absence of any negligence or breach of duty by Made Up, the decisions and consequential outcomes resulting from the RAMS shall be at the Client's risk and expense.
- 6.5 In the event that the Services are delayed due to the negligence or wilful misconduct of the Client, any and all additional costs or expenses incurred by Made Up resulting from such delay shall be payable by the Client to Made Up upon demand.

## **7 DELIVERY, INSTALLATION AND REMOVAL OF DELIVERABLES**

- 7.1 Unless specified in the Quotation and/or Order Form that installation, take down and removal of the Deliverables is a Service, the Client acknowledges and agrees that it shall be responsible for such installation, take down and removal of the Deliverables from the Site. Made Up shall deliver the Deliverables to the Site and (if applicable) and subject to the Client complying with its obligations under Condition 6, shall install the Deliverables.
- 7.2 The Client shall accept delivery of the Deliverables upon notification by Made Up that the Deliverables are ready for delivery to the Site. If the Client fails to accept delivery for any reason whatsoever, Made Up shall have the right to transport the Deliverables to a commercial warehouse and store the same. The storage of Deliverables pursuant to this Condition 7.2 shall be at the Client's expense and risk and shall be payable by the Client to Made Up upon demand.
- 7.3 The Client acknowledges and agrees that any information provided by Made Up (whether oral or in writing) relating to the installation, take-down or removal of Deliverables is provided by Made Up for guidance purposes only and Made Up shall have no liability to the Client in respect of the use and interpretation of such information. The Client shall be solely responsible for any actions taken by the Client or by any other person through the Client on or as a result of receiving any such information from Made Up.

## **8 CHANGES TO THE FEES AND SERVICES**

- 8.1 In the event that there is a change to the scope or execution of the Services pursuant to this Condition 8, Made Up shall be entitled to amend the Fees stated on a Quotation or Order Form. Made Up shall submit a revised Quotation to the Client and the Client shall be entitled to either accept such changes to the Fees in consideration for the additional Services, or, may decide not to proceed with the additional Services. Any decision not to proceed with the Services must be notified to Made Up before the commencement of any additional Service.
- 8.2 The parties may agree non-material changes (as determined by Made Up) to the scope of execution of the Services by alternative communication methods, including but not limited to, WhatsApp messages, email or telephone or video conferencing calls. Without prejudice to the foregoing, such changes must be agreed between the parties in writing (WhatsApp or email shall suffice).
- 8.3 Either party may propose material changes to the scope or execution of the Services, but no proposed changes shall come into effect until the parties have agreed in writing, the effect of the change on:

- 8.3.1 the Services;
- 8.3.2 the Fees (including, a revised Quotation where applicable);
- 8.3.3 the timetable for delivery of the Services (including the Installation Date); and
- 8.3.4 any other applicable terms of the Agreement.

## 9 FEES AND PAYMENT

- 9.1 In consideration for the supply of the Services by Made Up, the Client shall pay Made Up the Fees as set out in the Order Form. Time shall be of the essence of this Agreement with regards to payment of the Fees.
- 9.2 The Fees shall include any incidental Expenses incurred by Made Up if so specified in the Order Form. In the event that the Client requests Made Up to provide additional services or materials that are not specified in the Order Form, Made Up reserves the right to charge additional Fees for such services on a time and materials basis. Any additional Fees shall be payable by the Client to Made Up within thirty (30) days of the date of Made Up's invoice for such additional services.
- 9.3 If the Client is of the view that any invoice received from Made Up contains an error, it shall notify Made Up in writing within ten (10) business days of the date of such disputed invoice. Failure to notify Made Up within this timeframe shall constitute a waiver by the Client of its rights to dispute such invoice and the full invoice shall be payable by the due date.
- 9.4 Without prejudice to any other right or remedy that Made Up may have, if the Client fails to pay Made Up any sum due under this Agreement on the due date:
  - 9.4.1 the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Condition 9.4.1 shall accrue each day at four (4)% a year above the Bank of England's base rate from time to time, but at four (4)% a year for any period when that base rate is below 0%; and
  - 9.4.2 Made Up may suspend all or part of the Services until payment has been made in full.
- 9.5 All Fees are expressed to be exclusive of value added tax ("**VAT**"), and the Client shall in addition pay an amount equal to the VAT chargeable on those Fees on delivery of a VAT invoice. All Fees shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9.6 If any deposit is required by Made Up as specified in the Commercial Terms, Made Up shall not be obliged to provide the Services until such deposit is paid in full.

## 10 TITLE AND RISK

- 10.1 Title to the Deliverables shall pass to the Client only when Made Up has received in cash or cleared funds payment in full of the Fees (together with any interest, value added tax and any other additional charges, if applicable, payable in respect thereof) and of all other sums owing by the Client to Made Up on any account whatsoever.
- 10.2 Until title passes to the Client, Made Up shall be entitled at the Client's expense to require the Client to return the Deliverables to Made Up and enter the Site or any other premises where the

Deliverables are located to remove all Deliverables which remain Made Up's property. Neither the reservation of that right nor the time of passage of title will affect the Client's obligation to make timely payment as required by these Terms & Conditions. The Client bears the exclusive risk of loss or damage to the Deliverables at all times after delivery.

## 11 **CANCELLATIONS**

- 11.1 Instructions to cancel the Services in an Order Form must be made in writing to Made Up and shall be effective from the day Made Up receives them.
- 11.2 All Fee payments are non-refundable.
- 11.3 In the event of a Client cancellation of this Agreement for any reason (including, without limitation, as a result of a Force Majeure Event), the Client shall pay to Made Up all costs and expenses incurred by Made Up up to and including the date of cancellation (including any irrecoverable third-party costs and cancellation charges associated with the Services), payable on demand.
- 11.4 In the event of a cancellation by Made Up (other than if the Agreement is terminated as a result of the Client's breach), Made Up shall refund the Client the Fees for any Services not delivered and shall use its reasonable endeavours to refund any third-party costs, notwithstanding that some third-party costs and/or fees may be irrecoverable (or recoverable in part) and by signing this Agreement, the Client accepts such risk and cost.

## 12 **DEFAULT OR INSOLVENCY OF CLIENT**

- 12.1 Without prejudice to any other right or remedy available to it, if the Client is in default of its payment obligations under this Agreement or suffers an Insolvency Event (as further defined below), Made Up shall be entitled to:
  - 12.1.1 suspend the supply of the Services to the Client for so long as Made Up thinks fit; and/or
  - 12.1.2 demand immediate payment of the Fees and all other sums which may be outstanding to Made Up on any account, which shall thereupon become immediately due and payable; and/or
  - 12.1.3 repossess any of the Deliverables held by the Client and for this purpose enter upon the Site or any other premises of the Client or any third party where the Deliverables are located; and/or
  - 12.1.4 terminate this Agreement in accordance with Condition 13.

## 13 **TERM & TERMINATION**

- 13.1 This Agreement shall remain in full force and effect for the Term, unless terminated earlier in accordance with this Condition 13.
- 13.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement and/or any Order Form with immediate effect by giving written notice to the other party if:



- 13.2.1 the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
  - 13.2.2 the other party is subject to an insolvency event, being if the other party suspends, or threatens to suspend, payment of its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words “it is proved to the satisfaction of the courts” did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986, (“**Insolvency Event**”); and/or
  - 13.2.3 a party or any of its employees, agents or subcontractors suffer any form of harassment (including sexual), verbal abuse or any other form of derogatory behaviour from the other party or its employees, agents, or subcontractors.
- 13.3 Without affecting any other right or remedy available to it, Made Up may terminate this Agreement and/or any Order Form with immediate effect by giving notice to the Client if:
- 13.3.1 the Client fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment; and/or
  - 13.3.2 there is a change of control of the Client.
- 13.4 For the purposes of Condition 13.2.1, a material breach means a breach that has a serious effect on the benefit the terminating party would otherwise derive from this Agreement.
- 13.5 The termination of any Order Form shall not impact any other Order Form or this Agreement.
- 13.6 The termination of this Agreement shall mean that the parties can no longer enter into any further Order Forms for the Services but will not impact any current Order Forms which shall continue on the terms of this Agreement unless expressly terminated in accordance with this Agreement.

#### 14 **NON-SOLICITATION**

The Client shall not, without the prior written consent of Made Up, at any time from the date of this Agreement to the expiry of six (6) months after the termination or expiry of this Agreement, solicit, or entice away from Made Up, or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant, or subcontractor of Made Up in the provision of the Services.

#### 15 **WARRANTY & EXCLUSIONS**

- 15.1 Made Up warrants that the Services will be performed with reasonable skill and care by persons exercising skills appropriate to their function.
- 15.2 The warranty under Condition 15.1 is subject to the following conditions:
  - 15.2.1 Made Up shall have no liability to the Client until the Client has paid the Fees together with all other charges (if any) due to Made Up in full;
  - 15.2.2 The benefit of the warranty is for the Client only and is non-transferable;
  - 15.2.3 Made Up shall be under no liability to the Client in respect of any defect arising from:

- (a) fair wear and tear;
- (b) any damage caused whilst the Deliverables are in transit;
- (c) any damage caused due to a Force Majeure Event;
- (d) wilful damage or negligence by the Client, its employees, agents, or subcontractors;
- (e) abnormal working and weather conditions;
- (f) any incidental or consequential damage;
- (g) improper use of the Deliverables by the Client, its employees, agents, or subcontractors;
- (h) use or operation of the Deliverables by the Client, its employees, agents, or subcontractors otherwise than in accordance with the service plan recommended by Made Up, including, without limitation, any attempts to fix or otherwise alter the Deliverables by means not approved by Made Up;
- (i) failure due to power surge or connection to incorrect voltage; and
- (j) if the Deliverables have been tampered with, altered, modified, improperly repaired or re-worked by any person other than Made Up or the defect arises from any auxiliary equipment not supplied by Made Up which is incorporated in or attached to the Deliverables.

15.3 If the Client desires to claim against the warranty set out Condition 15.1, the Client shall notify Made Up promptly, but in any event, within forty eight (48) hours of the awareness of any defect. The Client shall provide a detailed description to Made Up of the defect and photographic evidence upon request.

15.4 Made Up gives no warranty that the Deliverables will remain up to date.

15.5 Subject to Conditions 15.2, 15.4, 15.6, and 15.6, in the event of a breach of the warranty under Condition 15.1, Made Up shall remedy the defect arising from such breach within a reasonable period of time. Made Up shall be entitled to determine at its sole discretion how to remedy the defect and the materials to use. If Made Up rectifies such defect pursuant to this Condition 15.5, then Made Up shall have no further liability of any kind to the Client in respect of or arising from such defect.

15.6 If a problem is found upon investigation not to be Made Up's responsibility under the provisions of Condition 15.2.3, Made Up may charge the Client forthwith for all reasonable costs and expenses incurred by Made Up in the course of or in consequence of such investigation.

15.7 If a repair due to a breach of warranty under Condition 15.1 is required when the Deliverables are in the United Kingdom, Made Up shall cover all costs for labour, local travel to the Site and the required materials. If a repair due to a breach of warranty under Condition 15.1 is required when the Deliverables are abroad, then Made Up shall cover the cost for the labour and materials, but all travel and accommodation shall be at the Client's risk and expense. Once the Client has

approved Made Up's quotation for such travel and accommodation, Made Up shall book the next available flight for the appropriate team member(s).

## 16 **INTELLECTUAL PROPERTY RIGHTS**

- 16.1 Nothing in this Agreement shall operate to transfer any Intellectual Property Rights owned by or licensed to a party as at the Commencement Date to the other party. As between the Client and Made Up, all Intellectual Property Rights in the Made Up Works which subsist now or at any time in the future shall be the exclusive property of Made Up. To the extent that any Intellectual Property Rights created in the course of the Services vest in the Client, the Client hereby assigns (by way of assignment of present and future rights), without payment, all such Intellectual Property Rights to Made Up with full title guarantee.
- 16.2 The Client hereby grants Made Up a fully paid-up, worldwide, non-exclusive, sub-licensable, transferable, royalty-free licence to use the Client Materials for the Term of this Agreement for the purpose of providing the Services to the Client.
- 16.3 Made Up hereby grants the Client a limited, non-exclusive, sublicensable, (strictly in accordance with the terms of this Agreement), revocable, terminable licence during the Term of this Agreement to use the Made Up Works for the purpose of receiving the Services, only. Any sublicences granted by the Client pursuant to this Condition 16.3 shall only be granted to the end-client receiving the Services and as approved, in advance and in writing by Made Up.
- 16.4 The Client warrants that the receipt and use in the performance of this Agreement by Made Up, its agents, subcontractors or consultants of the Client Materials shall not infringe any rights of third parties to the extent that infringement results from copying.

## 17 **SOCIAL MEDIA**

- 17.1 Subject to Condition 14, the Client hereby grants Made Up the right to post content on its social media channels in relation to the Services without prior approval from the Client or any third party.

## 18 **INDEMNITIES**

- 18.1 The Client shall indemnify and keep indemnified Made Up against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred or paid by Made Up arising out of or in connection with:
- 18.1.1 any claim brought against Made Up, its agents, subcontractors, or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement of the Client Materials; and/or
- 18.1.2 any inaccurate, incomplete, or out-of-date information provided by the Client to Made Up; and/or
- 18.1.3 claims for personal injury, loss or damage to property whatsoever or howsoever caused brought against Made Up by third parties arising directly or indirectly from the installation, take down and removal of the Deliverables by the Client.

- 18.2 With respect to any claim which is covered by the indemnities at Condition 18.1, the Client shall:
- 18.2.1 inform the Client in writing of any such claim as soon as is reasonably practicable upon becoming aware of the same;
  - 18.2.2 neither make any comment or admission to a third party in relation to any such claim, nor agree to any settlement or compromise of such claim, in each case without the prior written consent of Made Up; and
  - 18.2.3 give Made Up reasonable assistance (at the Client's cost) to enable the Client to settle such claim.

## 19 **LIMITATION OF LIABILITY**

- 19.1 Nothing in this Condition 19 shall limit the Client's payment obligations under this Agreement or the Client's liability under Condition 18.
- 19.2 The Client acknowledges that Made Up's obligations and liabilities in respect of the Services are exhaustively defined in these Terms & Conditions. Made Up shall not be liable for the usefulness of the Deliverables or their effects on the Client's other activities and business.
- 19.3 Nothing in this Agreement limits any liability which cannot legally be limited, including liability for:
- 19.3.1 death or personal injury caused by negligence;
  - 19.3.2 fraud or fraudulent misrepresentation; and
  - 19.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 19.4 Subject to Condition 19.3, Made Up's total liability (whether in contract, tort, including negligence, or otherwise) under or in connection with or based on any claim or aggregate or series of claims shall not exceed the sum of one hundred thousand pounds (£100,000) in aggregate, or the value of the Fees, whichever is lower, and the following losses are wholly excluded: (i) indirect and consequential losses, (ii) special losses, (iii) trading losses (iv) loss of profits and anticipated savings, (v) loss of sales or business, (vi) loss of agreements or contracts, (vii) loss of anticipated savings, (viii) loss of corruption of software, data or information, and/or (ix) loss of or damage to goodwill.

## 20 **FORCE MAJEURE**

- 20.1 **"Force Majeure Event"** means any circumstance not within a party's reasonable control including, without limitation:
- 20.1.1 acts of God, flood, drought, earthquake or other natural disaster;
  - 20.1.2 epidemic or pandemic;
  - 20.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
  - 20.1.4 nuclear, chemical or biological contamination or sonic boom;

- 20.1.5 any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
  - 20.1.6 collapse of buildings, fire, explosion or accident;
  - 20.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this Condition, or companies in the same group as that party);
  - 20.1.8 non-performance by suppliers or subcontractors (other than by companies in the same group as the party) seeking to rely on this Condition; and
  - 20.1.9 interruption or failure of utility service.
- 20.2 Provided it has complied with Condition 20.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (“**Affected Party**”), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 20.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 20.4 The Affected Party shall:
- 20.4.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than seven (7) days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and
  - 20.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 20.5 Without prejudice to Made Up’s rights under Condition 11.3, if the Force Majeure Event prevents, hinders or delays the Affected Party’s performance of its obligations for a continuous period of fourteen (14) continuous days, the party not affected by the Force Majeure Event may terminate this Agreement with immediate effect by notifying the Affected Party.

## 21 **DATA PROTECTION**

Both parties will comply with all requirements of applicable data protection and privacy legislation in force from time to time in the UK. The Client warrants and undertakes that it has a lawful ground to share personal data under this Agreement with Made Up, and that it has provided all fair processing information as necessary to any applicable data subjects, disclosing that it shall share such personal data with Made Up. Both parties shall execute all such documents and take all such other steps as are necessary for both parties to comply with their obligations under applicable data protection legislation.

## 22 **CONFIDENTIALITY**

- 22.1 For the avoidance of doubt, Confidential Information includes, without limitation, any information, drawings, designs and/or other creative work that forms part of the Made Up Works, (including, without limitation, any documents or other materials prepared and supplied as part of a pitch).
- 22.2 Subject to Condition 22.4 the Client undertakes to Made Up that it shall:
- 22.2.1 shall keep the Confidential Information secret and confidential;
  - 22.2.2 not use or exploit the Confidential Information in any way except for the Purpose;
  - 22.2.3 not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with this Agreement;
  - 22.2.4 not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for as provided for under this Agreement. Any such copies, reductions to writing and records shall be the property of Made Up;
  - 22.2.5 not use, reproduce, transform, or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means outside its usual place of business;
  - 22.2.6 apply the same security measures and degree of care to the Confidential Information as the Client applies to its own confidential information, which the Client warrants as providing adequate protection from unauthorised disclosure, copying or use;
  - 22.2.7 keep a written record of:
    - (a) any document or Confidential Information received from Made Up in tangible form; and
    - (b) any copies made of the Confidential Information; and
  - 22.2.8 ensure that any document or other records containing Confidential Information shall be kept at its premises and shall not remove or allow those documents and records to be moved from those premises.
- 22.3 All Made Up property shall remain the property of Made Up and must be returned immediately on request by Made Up, or on termination or expiry of this Agreement.
- 22.4 Information is not Confidential Information if:
- 22.4.1 it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the in breach of this Agreement (except that any compilation of otherwise public information in a form not publicly known shall still be treated as Confidential Information);
  - 22.4.2 it was available to the Client on a non-confidential basis prior to disclosure by Made Up; and/or
  - 22.4.3 the parties agree in writing that the information is not confidential.

- 22.5 Nothing in this Agreement shall prevent the Client from:
- 22.5.1 reporting a suspected criminal offence to the police or any law enforcement agency or co-operating with the police or any law enforcement agency regarding a criminal investigation or prosecution; or
  - 22.5.2 doing or saying anything that is required by HMRC or a regulator, ombudsman or supervisory authority; or
  - 22.5.3 whether required to or not, making a disclosure to, or co-operating with any investigation by, HMRC or a regulator, ombudsman or supervisory authority regarding any misconduct, wrongdoing or serious breach of regulatory requirements (including giving evidence at a hearing); or
  - 22.5.4 complying with an order from a court or tribunal to disclose or give evidence; or
  - 22.5.5 making any other disclosure as required by law.

## 23 **GENERAL**

- 23.1 No amendment of this Agreement shall be effective unless it is in writing and signed by the parties.
- 23.2 Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or to bind the other in any way.
- 23.3 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 agrees that it 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.
- 23.4 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. The parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 23.5 A person who is not a party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of this Agreement.
- 23.6 The Client shall not assign or otherwise transfer its rights or obligations under this Agreement to any other person without the prior written consent of Made Up.
- 23.7 Any notice given under this Agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally or sending it by pre-paid recorded delivery or special delivery to the relevant party at its registered office address. Notice may also be given to Made Up via email or to the Client at such other email addresses as may be notified to the other party from time to time. Any such notice shall be deemed to have been received:
- 23.7.1 if delivered personally, at the time of delivery;

- 23.7.2 in the case of pre-paid recorded delivery or special delivery, 48 hours from the date of posting (or other “proof of delivery” or “proof of posting” service that Royal Mail may from time to time offer); or
- 23.7.3 if delivered by e-mail, at the time of transmission provided no out of office response is received.
- 23.8 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the laws of England and Wales. Each party hereby irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.