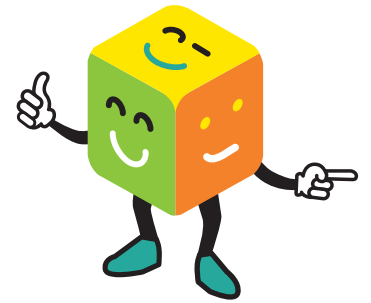
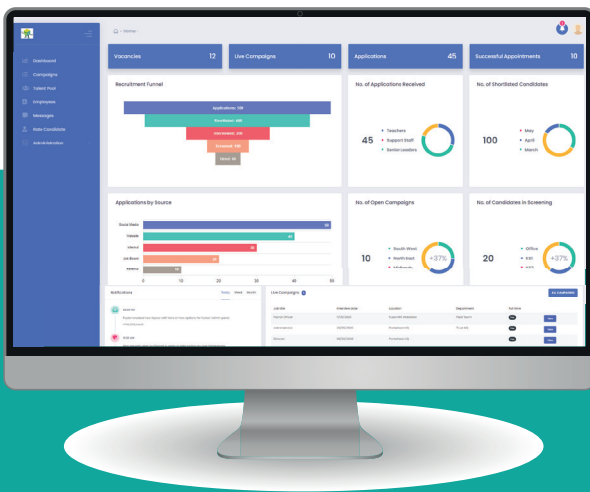




face-ed



SOFTWARE LICENCE

www.face-ed.co.uk

TERMS AND CONDITIONS



1. BACKGROUND AND DEFINITIONS

1.1 The Customer ("you"/"your") (as defined in the Quote/Order Form and Agreement Summary) wishes to take a licence from FACE-Ed Ltd ("FACE-Ed"/"we"/"our"/"us") to use the Services as identified in the Quote/Order Form (the "Services") and FACE-Ed wishes to provide such Services to the Customer in accordance with the Terms of the Agreement (as defined in clause 1.3 below).

1.2 This Agreement for the supply of the Services is made between FACE-Ed Limited, part of Fusion Education People Solutions (FEPS) (Reg No. 14704707). First Floor, Unit A, Cedar Court Office Park, Denby Dale Road, Wakefield, WF4 3FU. Registration No. 12658331 ("FACE-Ed") and the organisation identified in the Quote/Order Form as "School" (referred to in these Ts&Cs as "the Customer") and are each a party and together are referred to as the "parties". In the event of any conflict between the Quote/Order Form and these Conditions the terms of the Quote/Order Form shall apply.

1.3 Definitions

"Agreement" means the document FACE-Ed sends to the Customer to sign which contains a copy of the Quote/Order Form and these Terms and Conditions and the Start Date as specified in the Summary.

"Quote/Order Form" means the document sent to the Customer outlining full details about Service pricing.

"Terms and Conditions/Terms" means these terms and conditions for use of the FACE-Ed Services. These are included as a link in the Quote/Order Form but also set out in the Agreement.

"Price/Pricing" means the cost of the Service as listed on the Quote/Order Form as sales price. The price is calculated by multiplying by number of months by Employees as indicated on the Quote/Order Form or by quantity as listed. A summary of the price is also included on the Agreement Summary. FACE-Ed reserves the right to increase this cost and you would be notified of this at Renewal. If Employees increase during the Term (as defined in clause 2.1 below) the total price may increase as explained in clause 4.2 below.

"Employees" means the number of employees employed on active contracts with the Customer.

"Start Date" means the date the Agreement is signed or the date stated on the Agreement as the Start Date if this is different.

"Term" will consist of the Initial Term and any Renewed Term as defined in clauses 5.2 and 5.3 below.



2. PROVISION OF SERVICES

2.1 In consideration of and subject to the payment by the Customer of the Price, FACE-Ed shall use reasonable endeavours to commence the supply of the Services with the Customer within 1 working day of the Start Date and during the Term. The Customer shall pay the Price in accordance with the terms and the time periods set out in the Summary of the Agreement (and specifically in the Quote/Order Form and clause 4.2 below).

2.2 FACE-Ed hereby grants the Customer a non-exclusive, non-transferable, licence for the Term of this Agreement to access the Services solely to the extent necessary for the Customer to use them to manage recruitment campaigns and track applicants through to offer stage, on the terms of this Agreement. Notwithstanding the licence granted, FACE-Ed reserves the right to restrict or prevent access to any functions that allow access to critical server or system resources outside of those necessary to operate the Services. The licence does not include the right to directly modify the Services, functions thereof or any of FACE-Ed's directories or databases. This Agreement is for a single licence for each School listed on the Quote/Order Form and or in the Agreement. Accordingly, it is a breach of copyright and of this Agreement for the Customer to disclose or make available to any person or organisation (other than Employees) any hosting services internet addresses or passwords or otherwise to share access to the Services with any other person or organisation. If such rights are required the Customer must apply to FACE-Ed in advance and FACE-Ed may in its sole discretion, grant an extension of the licence to such third parties on terms to be agreed. FACE-Ed reserves the right to carry out investigations at the Customer's premises to monitor compliance with the provisions of this clause 2.2. The Customer hereby authorises FACE-Ed or its representatives to access its premises and records for such a purpose during the Term of the Agreement.

2.3 The Services will be provided through a centrally hosted system from data centre(s) within the UK, and operated on servers chosen by FACE-Ed. The Services will be operated on the server systems operated by or on behalf of FACE-Ed. The Customer will be given access to the Services via a public domain (Internet) as set out below. FACE-Ed will use reasonable endeavours to ensure that the Services are operating in accordance with the specification of the Service as defined in the Summary of your Agreement. FACE-Ed shall also provide the Customer with:

- (i) an administrative login ID to access and use the Services;
- (ii) any other reasonable information required by the Customer to connect to and use the Services purchased.

2.4 FACE-Ed may at its discretion modify or change the Services upon prior reasonable notice to the Customer, but the Services provided will aim to fulfill the same objectives.

2.5 The parties may from time to time agree that further software applications or services offered by FACE-Ed or one of the FEPS Group of Companies, should be supplied to the Customer. In these cases, a new Quote/Order Form shall be agreed and an Agreement

completed by the parties and this will form an additional contract subject to its own Terms and Conditions.

2.6 If the Customer cancels or reschedules delivery of any Services that involves attendance by representatives of FACE-Ed at the Customer's premises without giving 7 days prior written notice, FACE-Ed reserves the right to charge for such Services in full as listed on the Quote/Order Form.

2.7 We will supply the Services in accordance with this Agreement and we will comply with all applicable laws and regulations (including the UK Bribery Act, Data Protection Act 2018 and applicable health and safety laws).

2.8 Job Board Credits:

This is purchased separately and will be added to your contract as an item.

a) Job Board Credits provide a sponsored advert (FACE-Ed branded) on Indeed. All jobs posted to Indeed will also be posted to: www.JobLookup.co.uk, www.findajob.dwp.gov.uk, www.adzuna.com & google for jobs, www.google.co.uk and LinkedIn. Should other job boards be required these can be added at an additional cost.

(i) "Posting Credit" or "Pay Per Post (PPP) credit" means a credit used in the activity of posting, or reposting a Post/Advert as defined in 2.8a above. A Posting Credit is used/ deducted upon the queuing of any number of Posts/Adverts. For example:

The Customer may post their advert to a single job board = 1 PPP credit used

The Customer may post their advert to 10 job boards simultaneously = 1 PPP credit used

The Customer may repost an existing advert = 1 PPP credit used

For the avoidance of doubt, the deletion of posted adverts/posts does not consume any PPP credits. Furthermore, regardless of the number of Posts that are queued or updated, the action of queuing a Post/single batch of Posts equates to the use of one PPP credit.

Credits can be requested via our online shop on our website <https://www.fusionbusiness.org.uk/shop/faceed>. Credits will be uploaded onto the Customer's FACE-Ed Account for use. A summary of remaining credits can be seen in the Customer's FACE-Ed Account.

b) Each advert will be live for a minimum of 28 days unless the Customer removes the post.

c) Credits are valid for the length of time the Customer uses FACE-Ed. Upon termination of a FACE-Ed contract, any remaining credits will be lost.

d) We utilise Idbu software to provide recruitment advertising services, in association with Candidate Source. Further information is listed in section 7 of Schedule A, "Sub processors".

2.9 Featured Advertising:

This is purchased separately and will be added to your contract as an item.

a) As a service, Featured Advertising includes:

i) Professional copywriting of the Client's advert to manipulate job board search engines to ensure maximum exposure of the vacancy to relevant job seekers;

ii) Recommending which job boards should be used to deliver the best response;

iii) Publishing the Client's Advertisement for such period as agreed on a package of well-known mainstream job boards and a selection of the most appropriate niche job boards simultaneously; and

iv) Filtering the responses, if wanted, received to the Advertisement in accordance with the Client's criteria and forwarding any suitable applications to the Client for review.

b) The advert will be live for up to 28 days. The standard package includes posting to: CV-Library, Jobsite, Monster, Reed, Totaljobs. The vacancy will also appear on any partners or affiliates of the above job boards, a full list can be found on <https://www.candidatesource.uk.com/job-boards>

c) The advert must be supplied in the correct format, as per our onboarding document.

d) Once authorised, the job boards can take up to 72 working hours to set up the account but once the account is live any future adverts will be actioned within the SLA from Candidate Source of 4 working hours.

e) "Posting Credit" or "Pay Per Post (PPP) credit" means a credit used in the activity of posting, or reposting a Post/Advert. A Posting Credit as defined in 2.9a above is used/ deducted upon the queuing of any number of Posts/Adverts. For example:

The Customer may post their advert to a single job board = 1 PPP credit used

The Customer may post their advert to 10 job boards simultaneously = 1 PPP credit used

The Customer may repost an existing advert = 1 PPP credit used

For the avoidance of doubt, the deletion of adverts/posts does not consume any PPP credits. Furthermore, regardless of the number of Posts that are queued or updated, the action of queuing a Post/single batch of Posts equates to the use of one PPP credit.

Credits can be requested via our online shop on our website <https://www.fusionbusiness.org.uk/shop/faceed>. Credits will be uploaded onto the Customer's FACE-Ed Account for use. A summary of remaining credits can be seen in the Customer's FACE-Ed Account.

f) Credits are valid for the length of time the Customer uses FACE-Ed. Upon termination of a FACE-Ed contract, any remaining credits will be lost.

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g) We utilise Idbu software to provide recruitment advertising services, in association with Candidate Source. Further information is listed in section 7 of Schedule A, "Sub processors".

h) When you the Customer purchase this service you agree to provide FACE-Ed with name and email and login credentials for your advertising sites.



3. TELEPHONE SUPPORT

3.1 The team at FACE-Ed will provide support for the Services, included in the Price, as described below (the "Support Services"):

Support will be provided between 8.30am and 4.30pm, Monday to Friday excluding English public and bank holidays ("Business Hours" and "Business Days") and will comprise of telephone-based fault correction support.

a) Telephone Support will be provided between 8.30am and 4.30pm, Monday to Friday excluding public and bank holidays ("Business Hours" and "Business Day(s)") and will comprise of telephone-based fault correction support.

b) Email Support will be provided through the Help Centre, where you can log cases and see responses via your login. Responses will be provided in "Business Hours" and "Business Day(s)". Details for the Help will be provided during onboarding.

c) The Support Services will be available to the Customer during Business Hours only. For the avoidance of doubt, faults reported outside of Business Hours will be deemed to have been reported at the start of the next following Business Day.

d) The following initial response times will apply to the Support Services:

(i) When a Critical Fault is reported FACE-Ed will endeavour to respond within 4 Business Hours. A "Critical Fault" is a major fault such that a business critical function is not operational and major user inconvenience is being caused.

(ii) When a Non-Critical Fault is reported FACE-Ed will endeavour to respond within 1 Business Day. A "Non-Critical Fault" is a fault such that a (non-business critical) function is not operational and significant user inconvenience is being caused.

(iii) When a Minor Fault is reported FACE-Ed will endeavour to respond within 5 Business Days. A "Minor Fault" is a fault such that a non-business critical function is not operational but significant user inconvenience is not being caused.

(iv) Support Services are conditional upon the Customer providing FACE-Ed with such access to the Customer's systems and information as it shall reasonably require in order to be able to investigate and/or replicate the fault.

e) The initial responses will comprise an acknowledgement of the fault and the severity level of it. FACE-Ed will use reasonable endeavours to fix Critical, Non-Critical and Minor Faults as soon as reasonably possible after providing the initial response to the Customer.

3.2 FACE-Ed shall have no obligation to provide the Support Services in relation to faults which arise from:

(i) misuse, incorrect use of or damage of equipment from whatever cause (other than any act or omission by FACE-Ed or its sub-contractors), including failure or fluctuation of electrical power.

(ii) operator error, browser, Customer computer, network or internet connectivity issues.

(iii) trivial matters that do not comprise Critical, Non-Critical or Minor Faults.



4. CUSTOMER RESPONSIBILITIES, ACKNOWLEDGEMENTS & PAYMENTS

4.1 The Customer acknowledges and agrees:

(i) that the Services will be housed at a FACE-Ed chosen hosting facility, and will be operated on a server or servers as determined by FACE-Ed;

(ii) under this Agreement FACE-Ed will only provide Services as detailed in clause 2 above and Support Services as described in clause 3 above, and any other services requested by the Customer from FACE-Ed, may result in fees being payable in addition to the Price agreed; and

(iii) you shall be responsible for the use of the Services in accordance with any security or use related requirements as specified by FACE-Ed in this Agreement.

4.2 The Customer shall pay the Price for the duration of the licence as stated in the Quote/Order Form and Summary of the Agreement. Payment is agreed to be upfront in total or annually invoiced at the start of the Term and every subsequent annual anniversary for the "Initial Term" and the "Renewed Term" (each is defined in clause 5.2) as specified on the Quote/Order Form and shall be paid within 30 days of receipt of the invoice.

i) For Software Licences, as listed on the Quote/Order Form, the Price is calculated for a multi-year licence based on the number of Employees/type or organisation the Customer has specified in the Quote/Order Form. FACE-Ed will check this number annually and reserves the right to amend the price payable for the remainder of the term with its then current pricing if this number changes. FACE-Ed shall notify the Customer in writing of any change and discuss the discrepancies for the Price of the remaining Term. The Customer acknowledges that the Price is variable and dependent on the number of Employees who use the FACE-Ed system to access Services. Therefore, if the Customer does not accept the change in Price to reflect the number of Employees FACE-Ed may terminate the Contract.

4.3 All invoices shall be paid within 30 days of the date the invoice was sent. Failure to pay an invoice in 30 days will result in FACE-Ed invoking the debt recovery procedure (as set out in clause 4.7 below) and interest may be payable on all sums paid outside of the 30 day payment period, calculated on the sum outstanding multiplied by the statutory rate of interest.

4.4 Where a licence to use the Services for a Term is in excess of one year, the Customer shall be invoiced as agreed in writing in the Quote/Order Form. Where the Customer agrees to pay annually, the invoice will be issued around the anniversary of the Start Date (unless otherwise agreed) and each invoice shall be paid within 30 days. **The Customer shall always be required to pay the licence fees in full for the entire duration of the agreed Term.**

4.5 On automatic renewal of this Agreement (as set out in clause 5.3), the Customer shall be invoiced, typically no later than 30 days prior to the anniversary of the Start Date.

4.6 Invoices for any agreed additional services shall be raised from time to time by FACE-Ed.

4.7 Where a Customer fails to pay an invoice in accordance with clause 4.3, FACE-Ed may invoke debt recovery proceedings to recover the amount owed as follows:

(i) FACE-Ed shall provide the Customer with a written reminder and a time limit of 5 Business Days to pay, with details of the statutory interest due on late payments if applicable (as set out in clause 4.3).

(ii) if the invoice remains unpaid FACE-Ed shall provide the Customer with a second written reminder and a further 5 Business Days to pay;

(iii) If a Customer fails to pay an invoice within 5 Business Days of FACE-Ed's second reminder a £250.00 administration charge for fees relating to the recovery of the debt will be applied to the outstanding amount and a further invoice will be issued for the outstanding sum plus the administration charge, together with a final written reminder for the fees due.

(iv) Where a final reminder is not settled in the payment period set out in the final reminder letter, usually dated 5 Business Days after the second written reminder as set out in clause 4.7(iii), FACE-Ed may begin legal proceedings against the Customer to recover the outstanding sums due.

4.8 The Customer will:

(i) not, other than as allowed under law, directly or indirectly, reverse engineer, decompile, disassemble, alter, probe or attempt to derive the source code or other trade secrets included in the Services;

(ii) not access, copy or distribute the Services, related software or parts thereof, other than as allowed under this Agreement;

(iii) not use the Services to transmit, distribute, disseminate, publish or store any material or information that:

(a) is illegal, spam in nature, defamatory, obscene, indecent or harassing; or threatening or encouraging bodily harm, destruction of property, or infringing the lawful rights of any party;

(b) violates the privacy of any party as protected by applicable law (whether local, national or international) or regulation; or

(c) contains software viruses, worms, trojan horses or any computer code, files or programs designed to disrupt, destroy, invade, gain unauthorised access to, corrupt or modify the data, Services, or any equipment;

(iv) at all times, comply with all applicable laws and regulations with respect to the Services and use thereof;

(v) be responsible for entering into and maintaining all licences as stated in the Quote/Order Form and required for the use of the Services; and shall only use the Services in accordance with the terms of this Agreement;

(vi) indemnify FACE-Ed for all losses suffered by FACE-Ed arising from the Customer's breach of clause 7.1 subject to a cap of the greater sum of £45,000 (forty five thousand pounds), or, the maximum indemnity to which the Customer can agree without the approval of the Education & Skills Funding Agency ('ESFA'), as specified from time to time in the ESFA Academies Handbook (whether or not the Customer is subject to the ESFA Academies Handbook) (the 'Cap').

(vii) have a leased line and internet service provision to access our Services in accordance with this Agreement.



5. TERM, TERMINATION & RENEWAL

5.1 This Agreement shall be effective from the Start Date.

5.2 Unless terminated earlier, this Agreement will remain in effect for the duration specified in the Quote/Order Form and or the Agreement Summary or, if no duration is specified, for a period of two (2) years from the Start Date.

5.3 At the end of the Initial Term, the Agreement shall **auto-renew for two years unless terminated or a shorter renewal has been agreed with FACE-Ed as an exception**. The renewal period will be charged at the current pricing for the respective Service. Written notice of termination needs to be received at least 90 days in advance of the end date of the Initial Term or the applicable Renewed Term. Such notice can only be effective as at the last day of the Initial or current Renewed Term. If FACE-Ed's cost price increases at

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renewal, you will be notified at least 90 days in advance and the normal notify period for cancellation will apply. **If the Customer does not confirm in writing that it wishes the Agreement to end or not to auto-renew, as set out in this clause, and FACE-Ed has not confirmed receipt of this notice, the Agreement shall renew and the Customer shall be responsible for payment of the licence fees in full for the Renewed Term.**

5.4 Either party may terminate this Agreement in writing if the other party commits a material breach (including any breach of warranty), and in the case of a breach capable of remedy, such breach is not cured within fourteen (14) days of receipt of notice specifying the breach.

5.5 FACE-Ed may terminate this Agreement immediately upon notice if the Customer has not paid the Price in accordance with the terms of this Agreement or is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the Customer (otherwise than for the purposes of a solvent amalgamation or reconstruction), or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the Customer, or the Customer enters into or proposes any composition or arrangement with its creditors generally.

5.6 Upon expiry or termination of this Agreement:

(i) FACE-Ed shall stop providing the Services to the Customer and remove the Customer's database from FACE-Ed's server; and(ii) each party shall return to the other or destroy (at the discretion of the disclosing party) the confidential or proprietary information of the other (including but not limited to any personal data) provided under this Agreement.

(ii) each party shall return to the other or destroy (at the discretion of the disclosing party) the confidential or proprietary information of the other (including but not limited to any personal data) provided under this Agreement.

(iii) The Customer has the right to export its data held on FACE-Ed before the Agreement terminates provided 90 days' written notice has been given of this intention. System access is revoked at contract end date.

5.7 Any termination or expiry of this Agreement shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into force, or continue in force on or after that termination, including but not limited to any obligation in relation to the payment of the Price together with any other agreed fees and clauses 5.6, 6, 7, 9, 10 and 13.1..



6. DATA PROCESSING

6.1 FACE-Ed and the Customer shall each comply with the data protection obligations as defined and set out in our Data Protection Schedule A which is attached to this Agreement.

6.2 Notwithstanding the provisions contained within paragraph 2.3 of Schedule A, in the event that the Services are to be paid for by a Purchasing Party (for example when a school is converted to an academy as part of a Trust or in the situation where academies move from Trust to Trust) in place of the Customer, then the Customer hereby authorises FACE-Ed to provide access to the Customer's data to the Purchasing Party during the Term. The Customer will hold FACE-Ed harmless, and not liable in any way for disclosure of any personal data to the Purchasing Party under the terms of this Agreement.

6.3 In the event that clause 6.2 applies, the Customer shall ensure that it fully complies with its obligations as "data controller" under the Legislation (as defined in the Schedule A) and shall be fully responsible for notifying the data subjects of the possibility that their personal data will be viewed and managed by the Purchasing Party (e.g the new Data Controller).

6.4 FACE-Ed shall comply with its Privacy Policy as set out on our websites <https://www.feps.co.uk/privacy-policy/>

6.5 FACE-Ed may (provided that it complies with the Legislation as defined in the Schedule A) inspect data in the Customer's database:

- (i) to maintain and improve the performance and functionality of the Services and
- (ii) for any other valid and reasonable purpose in relation to the functionality of FACE-Ed software.

The Customer shall issue any notices or obtain any consents in relation to FACE-Ed's inspection or use of the data in the database as FACE-Ed may reasonably request in order to comply with the Legislation.



7. CONFIDENTIALITY

7.1 The Customer will not disclose to any party any technical or non-technical information related to the Services or relative to the set-up and security of the Services, unless such disclosure is approved in writing in advance by FACE-Ed. This set-up and security information includes but is not limited to hosting service Internet addresses, passwords, Internet URL's, Virtual Private Network set-up and encryption key information.

7.2 For any other confidential or proprietary information disclosed to either party further to this Agreement, the receiving party shall not disclose such information to any person or entity, other than its employees or other persons to whom disclosure is reasonably necessary, while the Agreement is in force and thereafter, provided however that a

party receiving confidential or proprietary information shall be allowed to disclose such information;

a) in accordance with applicable law; and/or

(b) where such information is provided to have been;

(i) in the public domain or known to the receiving party before it was so provided to or acquired by the receiving party; or

(ii) has been independently acquired by the receiving party without (so far as it is aware) the breach by any person of any obligation of confidentiality.



8. OBLIGATIONS

8.1 FACE-Ed shall use reasonable endeavours to:

a) implement the Services on a server system that provides for application performance consistent with what is reasonable for similar services and their typical use. FACE-Ed does not however warrant that specific response times or performance benchmarks of any kind will be guaranteed for the Services under this Agreement;

b) ensure the Services are available to the Customer for use in accordance with the terms of this Agreement.

c) notify the Customer of any need to suspend the Services for any repair or maintenance or any other planned service outage at least one (1) calendar week in advance, save that in emergency situations, when the Service needs to be taken out of service for immediate repair, such advance notice may not be possible. FACE-Ed will however attempt to notify the Customer at the earliest possible time in the event of an emergency outage.

8.2 FACE-Ed does not warrant specific uptime or network response times on any network. However, FACE-Ed agrees that it will use reasonable endeavours to actively monitor network performance, and make or recommend alterations to improve such performance as it becomes necessary.

8.3 FACE-Ed will save backups of FACE-Ed Services, and these backups will be stored in a manner consistent with all other FACE-Ed corporate backups and retained in line with FACE-Ed's retention strategy.



9. DISCLAIMER OF WARRANTIES

8.1 Other than as prohibited under law, all Services provided pursuant to this Agreement are provided or performed on an "as is" basis, and the Customer's use of the Services is solely at its own risk. FACE-Ed's sole liability and the Customer's exclusive remedy for non-compliance with this agreement is termination, as set out in section 5 of these Terms & Conditions, and damages, subject to section 10 below. FACE-Ed does not make, and hereby disclaims all other warranties, whether express or implied, including but not limited to, the implied warranties of merchantability, satisfactory quality and fitness for a particular purpose. FACE-Ed does not warrant that the services provided hereunder will be uninterrupted, without slow response time, error-free, or completely secure.

8.2 FACE-Ed does not assume any responsibility for the operation or management of the internet or the acts or omissions of any internet or external server service provider.



10. LIMITATION OF LIABILITY

10.1 Neither party excludes or limits its liability for:-

- (i) fraud by it, its employees or agents;
- (ii) fraudulent misrepresentation; or
- (iii) death or personal injury caused by its negligence or that of its employees or agents.

10.2 Subject to clause 10.1 above and clause 10.3 below, FACE-Ed's aggregate liability to the Customer (including in respect of legal fees and any other costs incurred) shall not exceed the Cap (see the definition in clause 4.8(vii)).

10.3 Subject to clause 10.1 above, in no event shall FACE-Ed be liable to the Customer or any third party for any indirect, consequential or punitive damages or losses, or other losses in relation to and arising from lost profits, damages, delays interruptions, or viruses arising out of or related to this Agreement regardless of the basis of the claim.



11. FORCE MAJEURE

11.1 Neither party shall be deemed in default or otherwise liable under this Agreement due to its inability to perform its obligations by reason of any fire, earthquake, flood, hurricane, tornado, snowstorm, epidemic, accident, explosion, casualty, strike, lockout, labour controversy, riot, civil disturbance, act of public enemy, embargo, war, act of god, act of terrorism, or any municipal, county or national ordinance or law, or any executive, administrative or judicial order (which order is not the result of any act or omission which

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would constitute a default hereunder), or any failure or delay of any transportation, power, or communications system or any other or similar cause beyond that party's reasonable control ("an Event Outside Our Control").

11.2 If an Event Outside Our Control takes place that affects the performance of either party's obligations under the Agreement:

a) the party subject to the Event Outside Our Control must contact the other party as soon as reasonably possible to notify them; and;

b) obligations under the Agreement will be suspended and the time for performance of obligations will be extended for the duration of the Event Outside Our Control. The parties will arrange a new date for performance of the Services after the Event Outside Our Control is over.



12. ASSIGNMENT, CONTROL AND SUBCONTRACTING

12.1 FACE-Ed may, at its absolute discretion, sub-contract or assign any of its rights and obligations under this Agreement to any third parties provided always that any party to which FACE-Ed sub-contracts or assigns its obligations shall be obliged to perform such obligations on terms equivalent to those imposed on FACE-Ed under this Agreement. In the case of sub-contracting FACE-Ed remains liable for the actions or omissions of the sub-contractor.

12.2 The Customer may not assign its rights or obligations under this Agreement without the written consent of FACE-Ed, except that if the Customer merges or consolidates with or into or transfers substantially all of its assets to another entity, this Agreement may be assigned to such successor and it shall be binding upon and inure to the successor's benefit.



13. MISCELLANEOUS

13.1 This Agreement shall be governed by, and construed in accordance with, English law and each of the parties irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that the proceedings have been brought in an inappropriate forum.

13.2 This Agreement is the complete and whole agreement between the parties with regard to the subject matter and supersedes all previous agreements between the parties with respect to the subject matter and specific related Services hereof and shall be binding upon the parties, their respective successors, assigns, subsidiaries, affiliates, legal and administrators.

13.3 Any notice or other document to be served under this Agreement may be delivered or sent by prepaid first class recorded delivery post or email to the party at the addresses specified in the Quote/Order Form.

13.4 The invalidity, illegality or unenforceability of any of the provisions of this Agreement shall not affect the validity, legality and enforceability of the remaining provisions of this Agreement.

13.5 Other than a person to whom FACE-Ed has assigned or sub-contracted its rights under this Agreement in accordance with clause 12.1 above, or a party to whom the Customer has transferred its rights in accordance with clause 12.2, no person who is not a party to this Agreement may enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

13.6 FACE-Ed may amend any provision of this Agreement on written notice to the Customer. Such amendment shall be effective on the seventh Business Day after the date of notice (provided this is on a Business Day or otherwise deemed received on the next Business Day) unless the Customer disagrees in writing within 7 Business Days of receipt of the proposed amendment specifying what amendment is not agreed and why and proposing alternative wording.

13.7 The failure of either party at any time to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of either party thereafter to enforce each and every provision thereof in accordance with its terms.

13.8 Signatures on a copy of the Quote/Order Form or on copies of any other documents provided pursuant to this Agreement transmitted by email, shall be binding upon the parties and of the same legal effect as an original signature.

13.9 The parties hereby agree that this Agreement may be electronically signed. The parties agree that any electronic signatures appearing on this Agreement have the same legal status as handwritten signatures for the purposes of validity, enforceability and admissibility.

SCHEDULE A – DATA PROTECTION



1. INTERPRETATION

- 1.1 FACE-Ed shall supply the Services in accordance with the Legislation (where Legislation means the Data Protection Act 2018 and the UK GDPR as defined in section 3(10) (and as supplemented by section 205(4)) of the Data Protection Act 2018, as may be amended from time to time. For the purposes of this Agreement the Customer is the data controller and FACE-Ed is the data processor of all Customer personal data except for Customer contact information for which FACE-Ed is a data controller.
- 1.2 For the purposes of this Agreement, “breach”, “data controller”, “data processor”, “data subject”, “personal data”, “processing”, “notification” and “data protection principles” shall have the meanings ascribed to them in the Legislation.



2. COMPLIANCE

- 2.1 Each party shall meet its obligations in relation to the processing of personal data as required by the Legislation.
- 2.2 The parties agree that the terms of this Schedule will be incorporated and form part of the terms and conditions of the Agreement between the Customer and FACE-Ed.
- 2.3 FACE-Ed warrants that it will process personal data only for the purposes required by the Customer to provide the agreed services in accordance with the terms of the Agreement and any other written instructions from the Customer. FACE-Ed shall not carry out any other processing of the Customer's personal data. This means where FACE-Ed is a data processor of Customer personal data it does not process Customer personal data further to this agreement except:
 - i) during the onboarding of Customer personal data to enable FACE-Ed to provide the Services using its systems
 - ii) where technical support is requested by the Customer

- 2.4 Where FACE-Ed is a data controller for Customer contact information it will always process such data in accordance with its obligations as a controller under the Legislation as defined in paragraph 1.1 of Schedule A.

- 2.5 Customer personal data includes; the names/previous names, phone numbers, email addresses and addresses of all candidates, National Insurance Number, gender/ gender assigned at birth, sexual orientation, ethnicity, marital status, religion or belief, date of birth, disability or health condition, caring responsibilities, next of kin, vetting checks held in the system and bank details. Customer contact personal information includes the name, telephone numbers and email addresses of each Customer employee who manages this Agreement on behalf of the Customer or is specified as a Key User.



3. OWNERSHIP

- 3.1 All information and personal data supplied by the Customer to FACE-Ed and used by FACE-Ed directly or indirectly in the performance of this Agreement shall remain at all times the property of the Customer. The Customer warrants that it is authorised to supply the Personal Data to FACE-Ed for the supply of the Services.
- 3.2 This Agreement does not authorise FACE-Ed to use the personal data collected on behalf of the Customer for any other purposes other than those stated in this Agreement.



4. INFORMATION SECURITY

- 4.1 At all times FACE-Ed shall maintain appropriate technical and organisational security measures against the unauthorised or unlawful processing or accidental loss, destruction or damage of the Customer's personal data.
- 4.2 FACE-Ed Limited shall take all reasonable precautions to preserve the integrity and prevent any corruption or loss, damage or destruction of the Customer's personal data.
- 4.3 The information security regime implemented by SAM shall be compliant with all relevant legislation and ICO issued guidelines.
- 4.4 The measures deployed shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the personal data, having regard to the nature of the personal data which is to be protected.
- 4.5 If required FACE-Ed Limited shall provide the Customer with a written description of the technical and organisational methods employed to safeguard the personal data.
- 4.6 In the event any personal data related to this Agreement in the possession of SAM becomes lost, corrupted or rendered unusable for any reason, SAM undertakes to
 - i) promptly restore such personal data using its back up and/or disaster recovery procedures at no cost to the Customer;
 - ii) notify the Customer as soon as possible and in any event within 24 working hours by telephone/email of any such breach of security and/or failure to comply with any data protection requirements which could give rise to enforcement measures and/or a complaint against the Customer.



5. EMPLOYEES

- 5.1 FACE-Ed Limited shall take all reasonable steps to ensure the reliability of any employees who may have access to personal data and ensure that all employees have received relevant training in data protection and in the care and handling of personal data and understand how this relates to FACE-Ed Limited's contractual obligations.
- 5.2 FACE-Ed Limited shall ensure that only those employees, contractors and associates, who may assist in carrying out its obligations under the contract, shall have access to the personal data and are bound by confidentiality obligations.
- 5.3 FACE-Ed shall take all reasonable steps to ensure that none of their employees, contractors and associates publish, disclose or divulge any of the personal data to any third party unless directed in writing to do so by the Customer or as required by legal obligation.



6. AUDIT AND INSPECTION

- 6.1 FACE-Ed shall comply with all reasonable requests from the Customer including access to its premises (upon giving reasonable notice) as the Customer may reasonably require to inspect and audit the personal data processing activities in order to satisfy itself that FACE-Ed is in full compliance with its obligations under this Agreement.



7. SUB PROCESSORS

- 7.1 The Customer hereby provides a general authorisation to FACE-Ed to engage sub-contractors to process the Customer personal data upon and subject to the provisions of this Agreement. Those sub-contractors approved as at the commencement of this Agreement are as set out in the Quote/Order Form.
- 7.2 FACE-Ed may only authorise a new third-party (subcontractor/subprocessors) to process personal data if:
 - (i) the Customer is provided with an opportunity to object to the appointment of each subcontractor within 14 working days after FACE-Ed supplies the Customer with full details in writing regarding such subcontractor;
 - (ii) FACE-Ed enters into a written contract with the subcontractor that contains terms substantially the same as those set out in this Agreement, in particular, in relation to requiring appropriate technical and organisational data security measures, and, upon the Customer's written request, provides the Customer with copies of the relevant excerpts from such contracts;
 - (iii) FACE-Ed maintains control over all of the personal data it entrusts to the subcontractor; and;
 - (iv) the subcontractor's contract terminates automatically on termination of this Agreement for any reason.
- 7.3 FACE-Ed must list all approved subcontractors in the Quote/Order Form and include any subcontractor's name and location and the contact information for the person responsible for privacy and data protection compliance.
- 7.4 Where the subcontractor fails to fulfil its obligations under the written agreement with FACE-Ed, FACE-Ed remains fully liable to the Customer for the subcontractor's performance of its agreement obligations.
- 7.5 We carry out a DPIA for any subprocessor chosen to help complete this Agreement. The subprocessors approved as at the commencement of this Agreement are set out in the Quote/Order Form.



8. GENERAL

- 8.1 Each party shall notify the other as soon as possible upon receiving any complaint, notice or communication from an individual, supervisory or government body which relates directly or indirectly to the processing of the personal data and
 - (a) provide the other party with any necessary information on a timely basis and;
 - (b) FACE-Ed shall only respond to any request/complaint in accordance with the written instructions of the Customer.
- 8.2 FACE-Ed shall notify the Customer as soon as possible and in any event within 3 working days of:
 - (i) a request from a data subject to access their personal data; or
 - (ii) a complaint or notice from any source relating to the Customer's statutory obligations under the Act and FACE-Ed will use reasonable endeavours to assist the Customer (at the Customer's request and costs) in dealing with any such subject access requests.

SCHEDULE A – DATA PROTECTION



8. GENERAL CONTINUED

- 8.3 FACE-Ed agrees to promptly carry out any request from the Customer to amend, transfer or delete all or any part of the personal data unless subject to a legal obligation, in which case FACE-Ed shall promptly inform the Customer of such an obligation and shall comply with the Customer's written instructions as soon as it is able to do so.
- 8.4 As part of Fusion Education People Solutions Ltd, FACE-Ed may share data across the group to fulfil the need to supply your Services. If the Customer purchases both a FACE-Ed licence and a SAM/SAMpeople licence or FusionHR SLA (Fusion Business Solutions Ltd, trading as FusionHR), then the Customer hereby authorises employees from both Staff Absence Management Ltd and FusionHR to liaise and share information in order to provide the best service to the Customer. The Support Services will be provided by Fusion Education People Solutions Ltd as a group.
- 8.5 The Customer is responsible for securing and updating access passwords provided for FACE-Ed software, including notifying FACE-Ed when a password should be removed e.g leavers and starters.
- 8.6 FACE-Ed will remove data held on the system, except in relation to billing and contract agreements with FACE-Ed, in line with our retention policy, namely 6 months after the expiry or termination of the relevant Customer licence. Please refer to 5.6(iii) of the Terms and Conditions above regarding the Customer's ability to export data.
- 8.7 We recommend that you keep copies of any documents/data/information needed. This is also an important legal document and we recommend you keep copies.
- 8.8 Where users of the Services are provided with links to third party websites FACE-Ed provides no warranty or assurance as to what such third parties may do with the Customer's personal data. The Customer shall review such third party privacy policy before visiting any such third party site or using any third party services.

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