

TERMS & CONDITIONS FOR RETAINED HR/EMPLOYMENT LAW AND ENVIRONMENT, HEALTH & SAFETY SUBSCRIPTION SERVICES

1. Definitions

"Anniversary Date": 12 months from the date of initial service commencement and every 12 months thereafter, or in the case of upgrade or downgrade to the Customer's subscription service, 12 months from the date of such change in subscription service and every 12 months thereafter.

"Associate Member": any organisation that purchases any HR & Legal service and who is not also a Core Member of Make UK.

"Customer": any organisation which signs up to any form of subscription service level or takes any pay-as-you-go HR & Employment Law services.

"Documentation": HR and/or Health & Safety (H&S) material as provided by MAKE UK.

"MAKE UK": Means EEF Limited (registered number 05950172) a company limited by guarantee and covers all brands within the MAKE UK family.

"Core Member": any organisation whose business activities fall into the manufacturing or adjacent sectors as determined by MAKE UK from time to time, and has an entitlement to access and subsequently purchases MAKE UK's core membership product.

"Minimum Term": 12 months from the date of service commencement (or longer as agreed between the Customer and MAKE UK) plus six months' notice period thereafter.

"Notice Period": six calendar months after expiration of the Minimum Term

"Operational working hours": Monday to Thursday 8.30am – 5.30pm, Friday 8.30am-5pm, excluding weekends, bank holidays and any other days MAKE UK offices are formally closed, to be notified to the Customer in advance of such closure.

"PAYG Fees": temporary uplift in subscription fees, and other one-off fees, immediately payable in full, to cover Tribunals, Settlement agreements and any other contracted work outside of MAKE UK's standard Subscription Service offerings.

"PAYG Services": services which are provided outside of the Subscription Service which are subject to additional PAYG fees.

"Services": incorporates both subscription services and PAYG services.

"Subscription Fees": fees applicable to the subscription service elected for a subscription period.

"Subscription Period": a period of 12 months from the initial date of service commencement and thereafter 12 months from the anniversary date or date of any upgrade/downgrade of service.

"Subscription Service": any services paid for in advance on a recurring basis for an agreed period of time as part a bundled package or any bespoke package as agreed between the Customer and Make UK.

2. These terms

- 2.1 These terms and conditions apply to any and all Subscription Services supplied by Make UK to the Customer for HR & employment law and Environment, Health & Safety services along with any PAYG services. Additional separate terms and conditions will apply to any training and consultancy purchased separately outside of a Subscription Service.
- 2.2 These terms and conditions will prevail over any terms and conditions used, contained, set out or referred to in any documents sent by the Customer to us.
- 2.3 These terms and conditions may be varied by MAKE UK from time to time by MAKE UK giving notice to the Customer of any such variation and which may be viewed at <https://www.makeuk.org/subscriptionservice/terms>

3. Minimum term & contract renewal

- 3.1 Subscription Services are subject to a Minimum Term of at least 12 months.
- 3.2 After expiry of the Minimum Term the Customer may terminate the service by providing no less than six calendar months' written notice in accordance with clause 20.1. Otherwise the Customer's Subscription Service will continue indefinitely until the expiry of any served Notice Period thereafter.

- 3.3 Where a Customer contracts with MAKE UK for a service contract period of greater than 12 months, the agreed duration of the contract will form the Minimum Term, with automatic continuation of service thereafter until expiry of the Notice Period. Notice can only be given after expiration of the Minimum Term.

4. General HR & Employment Law terms

- 4.1 None of our advice shall be used by any law firm or by any other adviser without our express written consent. MAKE UK reserves the right not to comment on the advice provided by any other solicitor or adviser or by in-house staff, although a second opinion may be provided.
- 4.2 Unless the Customer subscribes to the Level 2 service option which includes MAKE UK's settlement agreement/early conciliation support service, or accordingly buy tribunal and/or settlement agreement/early conciliation support on a PAYG basis or under Level 3, MAKE UK will not generally communicate with any other party on the Customer's behalf or enter into settlement negotiations. MAKE UK will not attend any employment tribunal or other hearing on the Customer's behalf unless they have paid for the relevant Subscription Service or PAYG Service. Litigation support is not provided in relation to health and safety, environmental or other any legal matters or claims save to the extent these may be raised in an employment claim (and then only if the Customer has subscribed to or bought on a PAYG basis MAKE UK's tribunals and/or settlements support).
- 4.3 MAKE UK may refuse to act for the Customer on any matter if:
 - a) acting for the Customer might give rise to a conflict of interest; or
 - b) two or more of MAKE UK's customers are separate parties to that matter; or
 - c) there is a risk of a breach of the solicitors code of conduct or any other professional codes of conduct which apply to our advisers.
- 4.4 Advice provided on any matter will be based on the details and information outlined by the Customer's employee or agent to our advice line service or adviser. If the Customer is concerned about a particular risk please notify MAKE UK at the earliest opportunity. MAKE UK also advise that the Customer takes written advice about areas of concern. MAKE UK's maximum liability in relation to any telephone or general advice will for the avoidance of doubt, be limited to the total fees payable over the Subscription Period.

SERVICE OPTIONS

Level 1

5. **MAKE UK HR and employment law telephone and email advice line service**
 - 5.1 For those Customers who subscribe to the HR & employment law module, only authorised, named and documented users of the Customer are entitled to access the advisory services.
 - 5.2 Authorised named users of the Customer may access the advisory services either by contacting the Customer's named adviser or the advice line or via email. MAKE UK will review and comment upon supporting documentation and correspondence in relation to any relevant matter.
 - 5.3 Please note that whilst MAKE UK will provide HR & employment law advice via the MAKE UK advice line service, MAKE UK's advisers will not be obliged to provide any on-site or face to face support.
- 6.0 **Update briefings : HR & employment law and/or health & safety**
 - 6.1 As part of the Subscription Service, Customers may attend any applicable HR & employment law and/or health & safety update briefings at any location dependent on the package subscribed to.
 - 6.2 Attendance at such briefings is subject to advance confirmation of attendance, as specified by the individual event, with spaces allocated on a first come first served basis.
 - 6.3 MAKE UK in no way guarantees availability of spaces at such briefings for a Customer's preferred time, date and location.
 - 6.4 The Customer acknowledges that where spaces are unavailable, or where MAKE UK has to cancel the update briefing for any reason whatsoever, MAKE UK is under no obligation to refund any part of the Subscription Fees payable whatsoever.
 - 6.5 Attendance at briefings is ordinarily restricted to one individual per Customer, with any attendees over and above this number being at the sole discretion of MAKE UK, and subject to possible further fees for any additional attendees.

- 6.6 Subject to clause 22 (liability and insurance) MAKE UK accepts no liability whatsoever for any actions taken by the Customer resulting from attendance at an update briefing, where the Customer has not taken specific advice either through the MAKE UK advice line or on a face-to-face basis under the Level 1, 2 or 3 Subscription Service.
- 7. HR & employment law and health & safety web content**
- 7.1 For those Customers who subscribe to the environment, health & safety module, online health & safety content can be found within the relevant restricted areas of the Make UK website.
- 7.2 MAKE UK reserves the right to amend, change, add or remove any Documentation as necessary during the course of the Subscription Period without notice.
- 7.3 Information, essential model documents, policies, procedures, toolkits and all other online based data provided by MAKE UK are for the benefit of the Customer's own use and are not to be copied, printed or distributed to any third parties whatsoever without the prior written consent of MAKE UK.
- 7.4 Subject to clause 22 MAKE UK accepts no liability whatsoever for any actions taken by the Customer on reliance on Documentation, where the Customer has not taken specific advice either through the advice line or on a face-to-face basis under the Level 2 or 3 Subscription Service.
- 7.5 From time to time such access to Documentation may be restricted or unavailable due to circumstances outside the reasonable control of MAKE UK. Under such circumstances the Customer acknowledges that MAKE UK is under no obligation to refund any part of the annual Subscription Fees whatsoever.
- Level 2**
- 8. Face-to-face HR & Employment Law support**
- 8.1 Where issues cannot be reasonably resolved via telephone and/or email, then those Customers who subscribe to the Level 2 HR & employment law Subscription Service are entitled to face to face advice, at a mutually convenient and reasonable location.
- 8.2 MAKE UK agrees to all reasonable endeavours to provide such face-to-face support subject to MAKE UK staff availability and reasonable notice. Where the Customer has been allocated a lead adviser, the Customer acknowledges that the nominated lead adviser may from time to time not be available, and in such instances may be re-directed to either the HR & employment law advice line service or an alternative suitably qualified person to deal with any issues at MAKE UK's discretion.
- 8.3 The Customer acknowledges that whilst MAKE UK will provide reasonable face-to-face support, additional fees may become payable where the Customer requires extensive face to face support or usage of the service becomes in any way, in the view of MAKE UK, unreasonable, in accordance with clause 18 on fair usage. In such circumstances MAKE UK will inform the Customer at the earliest opportunity where additional fees become due.
- 8.4 MAKE UK agrees to provide general advice on day to day HR issues such as disciplinary or grievance investigations, as well as advice in relation to employee relations and/or trade union issues. Where more strategic or onsite support is required from the Customer which goes beyond general advice including employee relations and/or trade union issues, then any additional consultancy or interim support will be separately chargeable under our consultancy terms & conditions.
- 9. Annual review of essential HR model documents**
- 9.1 For those Customers who subscribe to the HR & employment law Level 2, upon request by the Customer, MAKE UK will review the essential HR model documents policies of the Customer, and will advise as applicable on their alignment or otherwise with best practice employment law legislation.
- 9.2 Any request by the Customer for MAKE UK to rewrite or mark-up an existing HR policy or process of the Customer is not covered under the Level 2 Subscription Service and will be subject to a separate consultancy arrangement for which additional fees will be applicable.
- 10. Support with early conciliation**
- 10.1 For those Customers who subscribe to the HR & employment law Level 2, following notification to the Customer, MAKE UK will support the Customer with any early conciliation process including negotiation and documentation support.
- 10.2 In order to fulfil its obligations within legal deadlines the Customer will inform MAKE UK at the earliest opportunity of all required early conciliation support.
- 11. Support with Settlement Agreements**
- 11.1 For those Customers who subscribe to the HR & employment law Level 2, the Customer will receive settlement agreement support including opinion, negotiation support and the drafting and production of the settlement agreement documentation as arising during the normal course of business.
- 11.2 Whilst the number of settlement agreements covered are not specifically capped (unless specified), fees are subject to possible review and amendment based upon clause 18 on fair usage.
- 11.3 The Customer acknowledges that only those settlement agreements incurred through the normal course of business are covered by the Subscription Fees. Where the Customer undertakes some form of large scale programme of restructuring, or any other substantial event, which requires significant numbers of settlement agreements, then MAKE UK reserves the right to charge additional fees based upon the amount of time and effort required to provide the service under a consultancy arrangement. Settlement agreements relating to senior or executive management of the Customer are outside the scope of this service and subject to possible additional fees. Any undertaking of settlement agreements for senior management or executives within the Subscription Fee is at MAKE UK's sole discretion.
- 11.4 Any monies paid by the Customer to the Customer's employee as part of any settlement agreement is not covered under the settlement agreement support service.
- 11.5 The Customer acknowledges that where the number of settlement agreements are capped in a given year, any settlement agreements not used during the period are not carried over to the following subscription Period. MAKE UK is under no obligation to refund any Subscription Fees whatsoever in the event that settlement agreements are not utilised.
- 12. Environment, Health & Safety annual review**
- 12.1 For Customers who subscribe to Level 2 or Level 3 of the environment, health & safety module, upon request by the Customer, MAKE UK agrees to provide up to 1 day per annum conducting an annual review of the Customers health & safety policies, procedures and practices.
- 12.2 Any such work undertaken by MAKE UK is to provide a summary gap analysis only. Any work conducted outside of this annual review, and/or work undertaken which exceeds one day in totality, is subject to a separate consultancy arrangement for which additional fees will be applicable, or additional days can be obtained by upgrading the Subscription Service to include additional days, with such days reflected in the Subscription Fee.
- 12.3 The Customer acknowledges they are under no obligation to request an annual review each year, but by not requesting such annual review also acknowledges that MAKE UK is under no obligation to refund any Subscription Fees whatsoever.
- 13.0 Additional Environment, Health & Safety consultancy days**
- 13.1 Customers who subscribe to the environment, health & safety module, have an option to subscribe to additional consultancy health & safety days over and above the one day contained within Level 2, within their recurring Subscription Service, for an additional Subscription Fee.
- 13.2 The Customer may choose any number of days up to a maximum of 20 days per Subscription Period.
- 13.3 Any additional days requested by the Customer will cover specified consultancy days only, as outlined in the Customer's service proposal, which are subject to additional fees.
- 13.4 Any additional days subscribed to by the Customer are subject to a minimum term of 12 months and then six months' notice thereafter for cancellation or downgrade.
- 13.5 A Customer may upgrade the number of subscribed days at any point as per clauses 13.4 and 15.4.
- 13.6 Any days unused by the end of the Subscription Period may not be carried over, unless agreed in advance with MAKE UK. Any such carryover of unused days is at the sole discretion of MAKE UK.
- 13.7 Consultancy days may be used at any time and location within the United Kingdom only, and will consist of whole days only of 7.5 hours duration. No half days may be drawn down against the requested number of days. MAKE UK will be entitled to draw down against the number of days subscribed to cover sufficient time for travel where applicable.
- 13.8 Any consultancy days booked and scheduled as agreed between MAKE UK and the Customer which are subsequently cancelled, will be lost unless 2 weeks' notice of cancellation is received. Any days which are cancelled and rescheduled must be rescheduled within the same subscription year otherwise clause 13.6 will apply.
- 13.9 The Customer acknowledges that it is their responsibility to request, agree and schedule those consultancy days subscribed to during the course of a Subscription Period. MAKE UK accept no liability whatsoever for failure of the Customer to request consultancy days to be delivered, or where the Customer provides unreasonable notice of a request for consultancy.
- 13.10 Additional days will primarily be delivered by MAKE UK employed consultants, although MAKE UK reserve the right to use third parties as required. Where the Customer requests any third party involvement, then the Customer acknowledges additional fees may become due.
- 13.11 Where a Customer provides notice of downgrade to the number of days subscribed to, and the Notice Period spans the subscription renewal Anniversary Date, so the consultancy day entitlement will be pro-rated for the new Subscription Period.
- 14. Employment Tribunal support and Level 3 services**
- 14.1 Following notification to the Customer of a lodged tribunal, MAKE UK will assess the likely resource requirements in order to support the Customer through the end to end employment tribunal process (including ET3 responses), and will provide a PAYG Fee quote payable by the Customer as a one-time payment in return for MAKE UK to provide the employment tribunal support service for that tribunal.
- 14.2 Where MAKE UK provides such a quote for work, MAKE UK will also provide a relevant scope of works to be conducted and the basis upon which the fee has been derived following conversations with the Customer. Should the requirements materially change for any reason at any point, requiring significantly more work beyond that initially envisaged, the Customer acknowledges that additional fees may become due. In such instances MAKE UK endeavours to notify the Customer at the earliest opportunity.
- 14.3 In exceptional circumstances MAKE UK may agree to provide employment tribunal support on a retained basis (known as Level 3) through an uplift in the Subscription Fee. In such instances the Customer acknowledges that MAKE UK

may revoke the delivery of this service on this basis at any time, not least where use of the service is beyond reasonable when taking into account fees paid as per clause 18. Furthermore, no employment tribunal support will be provided in the first six months from commencement of a Level 3 Subscription Service on a retained basis, unless the Customer pays for such service on a PAYG basis. Furthermore, MAKE UK will be entitled to request additional fees where a large number of tribunals arise whereby it is evident from the outset that the work involved would invoke the fair usage clause under clause 18.

- 14.4 Where MAKE UK provides employment tribunal support, either under a PAYG or retained basis, then the following terms will apply:
- 14.4.1 Following notification to the Customer of a lodged tribunal, MAKE UK will support the Customer by completing and submitting all ET3 responses as requested by the Customer.
- 14.4.2 In order to fulfil its obligations within legal deadlines, the Customer will inform MAKE UK at the earliest opportunity of all tribunal claims lodged requiring an ET3 response.
- 14.4.3 MAKE UK will not be held responsible for any late response submissions where the Customer has not promptly notified MAKE UK of a lodged tribunal claim.
- 14.4.4 Following submission of an ET3 response, upon request, MAKE UK will review and advise on the initial prospects of success of the claim.
- 14.4.5 MAKE UK accepts no responsibility for the actual outcome of the claim based on its assessment of the prospects of success.
- 14.4.6 If the Customer wishes MAKE UK to represent them at an employment tribunal or other employment hearing the Customer must inform MAKE UK as soon as they are aware of a claim. If the Customer notifies and agrees any fees and scope of works with MAKE UK less than 3 days prior to the deadline for preparing a response to a claim then MAKE UK reserves the right not to prepare the response, handle the claim or attend the hearing. MAKE UK further reserves the right to make an additional charge in the sum of £500 + VAT for the preparation of the response to any Tribunal Claim received within the 3-day period referred to if MAKE UK agrees to handle the claim.
- 14.4.7 The Customer also agrees to supply MAKE UK with all supporting documents and other information. Failure to do so may mean that MAKE UK is unable to represent the Customer at a hearing or prepare a response on their behalf.
- 14.4.8 Where a Customer takes tribunal support under a retained basis through an uplift in Subscription Fee (level 3) and such support is provided by MAKE UK which extends beyond any Notice Period provided by the Customer, then the Customer agrees to pay additional one-off fees to cover the work for the period until such time that the tribunal is complete, taking into account any excess usage of the service to date. MAKE UK is under no obligation to accept any new tribunals where the Customer has provided notice of termination, or where any fees due are still outstanding.
- 14.4.9 If a proposed tribunal hearing is listed for 4 days or longer or MAKE UK estimates that the value of a potential claim is more than £100,000 or if the case raises issues which are either unusually complex or have implications beyond that case then MAKE UK reserves the right to instruct a Barrister at the Customer's expense for the entire hearing. Any Barrister will be appointed in consultation with the Customer, however if MAKE UK requests consent to appoint a Barrister and the Customer refuses, then MAKE UK reserves the right to cease acting in relation to that matter.
- 14.4.10 If a lodged tribunal involves a claim brought by multiple Claimants MAKE UK reserves the right to exclude the case from the Customer's subscription. Any such case will be conducted on a PAYG Fee basis subject to agreement with the Customer.
- 14.4.11 MAKE UK reserves the right to charge for reasonable disbursements and costs including (but not limited to) the costs of retaining professional witnesses, travelling and subsistence expenses, copying charges, and the cost of any external Barrister or Counsel.
- 14.4.12 Awards and/or damages are not covered under any circumstances.

FEES

15. Subscription service fees

- 15.1 Subscription Fees are payable on an annual basis. Subscription fees are based on full headcount (not FTE) which incorporates all permanent employees, any other fixed term contract workers included on the Customer's payroll and any agency workers with longer than 12 weeks employment history. If at any point the number of employees increases then MAKE UK reserves the right to increase the Subscription Fee from the point that headcount increased. MAKE UK also reserves the right to revise the Customer's Subscription Fees at any point in line with clause 18 where usage exceeds that reasonably expected as compared to the fees paid by the Customer.
- 15.2 In the event that any fees or charges whatsoever are due to MAKE UK, or the Customer's Subscription Fee has been incorrectly calculated then the Customer agrees to settle any invoice for additional or unpaid Subscription Fees rendered by MAKE UK.
- 15.3 Customers subscribe to MAKE UK services through varying levels of service package as described in their contract. Please note that Customers will only be entitled to access those services which are included within a service level they have subscribed to.
- 15.4 If a Customer wishes to move up to a higher Subscription Service level at any point in time Subscription Fees will be immediately uplifted to reflect the upgraded service option from the date of upgrade. The Customer will also be required to commit for a further Minimum Term of 12 months from the date of upgrade.
- 15.5 The right to access services commences upon cleared payment of the annual fee, or in the case of those who pay by direct debit, successful collection of the first instalment.

- 15.6 After the Minimum Term, if the Customer wishes to reduce their service option then they will be required to give six months' notice of this and their Subscription Fee will be recalculated accordingly from the date that the service entitlement is reduced. Additionally where the Customer gives notice of reduction of headcount MAKE UK may take into account the reduction in headcount and service usage agree a reduced Subscription Fee to take effect no earlier than 6 months from the date notice is received of the reduction in headcount. Further either where the Subscription Fee is recalculated consequent on a reduction in service option or headcount the Customer will also be required to commit for a further Minimum Term of 12 months from the date of downgrade.
- 15.7 Where a direct debit collection is returned as unsuccessful, through no fault of MAKE UK, and where generally Subscription Fees remain unpaid, MAKE UK reserve the right to put on hold any and all services with immediate effect until such time that payment is received in full, either through electronic payment or reinstated direct debit collection. MAKE UK reserves the right to charge an administration fee of £60 for each returned direct debit.

- 15.8 The Customer acknowledges that Subscription Fees may be amended at any time throughout the Subscription Period, as per clauses 17 and 18, with any additional fees due being payable immediately. Payment terms for annually billed Customers are immediate payment in full, in advance of the anniversary date. The Customer acknowledges that no discount is available for annual payments in advance.

16. Pay-as-you-go ("PAYG Fees") service fees

- 16.1 Customers who use tribunal and/or settlement agreement services on a PAYG basis will be quoted a fixed PAYG Fee on a case by case basis prior to the commencement of any work.
- 16.2 Upon agreement to the quoted fixed PAYG Fee, the Customer acknowledges that such fees are payable in advance of commencement of the work.
- 16.3 Where a Customer has an existing direct debit instruction in place for Subscription Services, the Customer agrees that MAKE UK may collect any PAYG Fees due, in full, which relate to tribunals and/or settlement agreements via a one-off direct debit collection process.
- 16.4 If a proposed tribunal hearing is listed for 4 days or longer or MAKE UK estimates that the value of a potential claim is more than £100,000 or if the case raises issues which are either unusually complex or have implications beyond that case then MAKE UK reserves the right to instruct a Barrister at the Customer's expense. Any Barrister will be appointed in consultation with the Customer, however if MAKE UK requests consent to appoint a Barrister and the Customer refuses, then MAKE UK reserves the right to cease acting in relation to that matter.
- 16.5 MAKE UK reserves the right to charge for reasonable disbursements and costs including (but not limited to) the costs of retaining professional witnesses, travelling and subsistence expenses, copying charges, and the cost of any external Barrister or Counsel.
- 16.6 Awards and/or damages are not covered under the tribunal support service.

17. Fees – General

- 17.1 The Customer acknowledges that it is their responsibility to provide, where applicable, a valid purchase order number to be included for all work and services provided by MAKE UK. MAKE UK is not liable for the Customer's failure to provide such purchase order numbers, and the Customer accordingly acknowledges that fees are still due in full in the instances where a valid purchase order number has failed to be provided in reasonable time. Where a Customer requires, but fails to provide, such a purchase order number in advance of the anniversary date, MAKE UK will still be entitled to invoice for any contracted services, with the Customer acknowledging such invoices will be due and valid even without the inclusion of a purchase order number.
- 17.2 If MAKE UK's staff or contractors are required to discharge out-of-pocket expenses in delivering Services to the Customer those expenses will be charged to the Customer as may be agreed from time to time. In the absence of any express agreement the Customer agrees to pay all reasonable expenses incurred by MAKE UK or their employees or contractors in carrying out services on the Customer's behalf.
- 17.3 Returned direct debits, or in the case of annually billed Customers, non-payment or delayed payment may result in immediate suspension of services until the successful collection of any outstanding fees. Nonpayment which is of no fault of MAKE UK may result in the immediate cancellation of the contract. The Customer has no right of cancellation in these circumstances.
- 17.4 In the event that a direct debit collection is returned unpaid, MAKE UK retains the right to charge an administration fee of £60 for each returned direct debit.
- 17.5 All Subscription Fees are routinely reviewed on the Anniversary Date and are subject to uplift based on CPI and in addition service usage versus that reasonably expected.
- 17.6 Any sums payable which remain outstanding and which are not paid on the due date shall bear interest from day to day at the rate equal to 8% per annum above the Bank of England base rate.
- 17.7 All fees and charges are quoted exclusive of VAT unless otherwise specified. VAT will be applied at the prevailing rate.

18. Fees – Fair usage

- 18.1 Outside of the routine annual fee review process as per clause 17.5, Subscription Fees are also subject to immediate review and adjustment where it is believed that the Customer's usage of the service is excessive.
- 18.2 Where it is believed a Customer's usage is unreasonably excessive and such usage levels are not reflected in the fee charged, then MAKE UK reserves the right to charge additional fees and/or reduce a Customer's service entitlement to that reasonably expected for the fee charged.

- 18.3 MAKE UK agrees to provide reasonable notice of proposed changes to fees in such circumstances, providing no less than 30 days' notice of a change in fee or change in service entitlement.
- 18.4 Where the parties fail to agree to a revised price and/or amended service entitlement on the basis of excess use, and where the Customer has been provided with 30 days' notice of such change, then MAKE UK reserves the right to cancel the contract with immediate effect, with no further liability in service provision. The Customer has no right of cancellation in such circumstances.
- 18.5 The Customer acknowledges that upon contracting for services with MAKE UK, the initial Subscription Fee will reflect an average level of usage based on size and knowledge of the company, as measured by headcount. In situations where usage is significantly lower in comparison to the fee paid, MAKE UK still contracts and maintains resourcing to manage the expected volume of activity, and accordingly the Customer acknowledges and accepts that there will be no reduction in Subscription Fees for a given Subscription Period.
- 19. Services**
- 19.1 MAKE UK will provide the services with reasonable skill and care. Unless expressly agreed in writing no further conditions, warranties or representations are given by MAKE UK in relation to the services and any such terms are excluded to the fullest extent permitted by law.
- 19.2 Services will be provided to you, the Customer, and not to any other third party. MAKE UK will not be obliged to provide services to any third party nor will MAKE UK accept any liability or duty of care to any third party whatsoever.
- 19.3 In order to allow MAKE UK to provide the services the Customer agrees that they, together with their employees and agents will at all times:
- a) provide MAKE UK with complete, accurate and timely information, data and documents which may be requested;
 - b) co-operate fully with MAKE UK in the provision of the services and permit MAKE UK to provide the services free of obstruction and interference;
- 20. Termination**
- 20.1 The service contract may be terminated by either party at any time by providing no less than six months' notice in writing, for any reason, following expiry of the initial Minimum Term of 12 months (or such longer Minimum Term as may be agreed).
- 20.2 MAKE UK shall be entitled to terminate the service contract immediately in the event that the Customer fails to make payment of any Subscription Fees or other fees which are due and payable, or if the Customer is otherwise in material breach of these terms and conditions.
- 20.3 MAKE UK shall be entitled to terminate the service contract immediately where usage is unreasonably excessive in comparison to the Subscription Fees paid, and where the parties fail to agree to a revised price and/or amended service entitlement on the basis of excess use, and where the Customer has been provided with 30 days' notice of such change. The Customer has no right of cancellation in such circumstances.
- 20.4 Either party shall be entitled to terminate the service with immediate effect if any of the following events occurs in respect of the other party:
- a) a proposal is made for a voluntary arrangement or for any other composition, scheme or arrangement with, or assignment for the benefit of its creditors;
 - b) a shareholders meeting is convened or a resolution is passed for its winding up (except for a bona fide reconstruction or amalgamation)
 - c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors meeting is convened pursuant to s.98 of the Insolvency Act 1986
 - d) a receiver, manager or administrative receiver is appointed over any or all of its undertaking or assets
 - e) an administrator is appointed or an application is made for such an appointment or the making of an administrative order, or;
 - f) it becomes insolvent within the meaning of s.123 of the Insolvency Act 1986, or;
 - g) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986.
- 20.5 MAKE UK shall be entitled to terminate the service contract immediately in the event that the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.
- 21. Staff and Contractors**
- 21.1 MAKE UK shall be entitled to subcontract, delegate or assign the provision of any services or any of their rights or duties under these terms. MAKE UK shall have discretion as to which of their third party suppliers, employees or self-employed agents, contractors or associates ("Associates") are assigned to perform the services.
- 21.2 The Customer agrees to pay MAKE UK's introduction fee as set out in clause 21.3 in the event that the Customer, any subsidiary, group or associated company or any person connected with the Customer (directly or indirectly) recruits as an employee or engages as self-employed contractor any employee or Associate of MAKE UK if that employee or Associate was involved in the provision of services to the Customer by MAKE UK in the 12 month period prior to their engagement by the Customer.
- 21.3 In the event that the Customer engages an employee or Associate of MAKE UK as set out in clause 21.2 the Customer agrees to pay an introduction fee (which shall be immediately due and payable) equal to 50% of the annual remuneration (including pay and benefits) payable by the Customer to the relevant individual in the year following the commencement of that individual's employment.
- 22. Liability and Insurance**
- 22.1 MAKE UK's aggregate liability including the liability of their partners, agents, subcontractors and employees in respect of any services provided to the Customer by MAKE UK in connection with the Customer's service contract will be limited to the lower of the total Subscription Fees payable over the Subscription Period, or in the case of PAYG work, the PAYG fees.
- 22.2 Nothing in these terms will limit or exclude MAKE UK's liability for death or personal injury arising as a result of MAKE UK's negligence.
- 23. Intellectual Property and Confidentiality**
- 23.1 All intellectual property rights of any nature (including copyright) created or provided by MAKE UK or its employees or Associates shall be and remain the property of MAKE UK and any such materials shall be licensed to the Customer for their internal use only.
- 23.2 The Customer undertakes to keep all publications materials created by MAKE UK confidential and not to copy, publish or distribute any such information, materials or documents to any third party without MAKE UK's prior written consent (save where such information is in the public domain or the Customer is required to disclose such information by law).
- 23.3 Each party agrees with the other not to divulge or allow to be divulged any confidential information relating to the other's business or affairs other than to its employees or Associates who need to know such information or where the other party has consented to such disclosure.
- 24. General**
- 24.1 Each of the parties warrants its power to enter into this agreement and has obtained all necessary approvals to do so.
- 24.2 MAKE UK and the Customer are independent of each other and nothing in these terms shall be taken as creating a relationship of agent to principal, employer to employee, partnership or joint venture between MAKE UK any other party. Neither party shall be entitled to enter into agreements or other arrangements on behalf of the other.
- 24.3 Neither party shall be liable to the other or be deemed to be in breach of these terms by reason of any delay in performing, or any failure to perform, any of their obligations in relation to these terms, if the delay or failure was due to any cause beyond their reasonable control such as severe weather, a natural disaster, strikes, governmental action, terrorism, pandemic, war and civil unrest.
- 24.4 These terms, together with the contract represent the entire agreement between the parties and supersede any previous representations or agreements whether recorded in writing or otherwise (save in the event of fraud or fraudulent misrepresentation).
- 24.5 The parties agree that these terms are fair and reasonable in all the circumstances. However if any provision of these terms is held not to be valid by a court of competent jurisdiction but would be valid if part of the wording were deleted, then such provision shall apply with such deletions as may be necessary to make it valid. If any of the provisions in these terms are held not to be valid the remaining provisions of these terms shall remain in full force and effect.
- 24.6 Both parties agree that these terms shall not be enforceable by any person who is not party to this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 24.7 By providing personal data relating to their employees or agents to MAKE UK, the Customer confirms that they are entitled to disclose that data to MAKE UK under the terms of the Data Protection Act 2018 and related legislation and that MAKE UK are entitled to process such data for the purposes of providing the contracted Services.
- 24.8 Either party may give any notice to the other by sending it by post addressed to their registered address or by sending it to such electronic communications address as may be notified to the other from time to time.
- 24.9 These terms will be governed and construed according to the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.