

Panther Software Ltd
Software Terms of Service
Last Updated: 26 November 2025

1. INTERPRETATION

- 1.1 In addition to the defined terms in the Order Form (which shall apply to this Agreement), the following terms shall have the following meanings:

“Additional Services”: any additional services to the Services in the Order Form provided to the Customer by the Supplier as set out in any applicable Supplementary Order Form. Such “Additional Services” may include any development or consultancy services provided in relation to the Software and Services.

“Admin User”: an employee or other personnel of the Customer authorised to hold administration rights in relation to the Customer’s use of the Services on behalf of the Customer, provided with login credentials to access the Software and authorised by the Customer to add other Users.

“Admin User Rights”: the Admin User’s rights to access the Software as set out in clause 2.1(b).

“Confidential Information”: information that is proprietary or confidential and is either clearly labelled as such or would by its nature reasonably be considered to be confidential.

“Contract Start Date”: the date on which the last party signs the Agreement.

“Customer Data”: the data inputted by the Admin User, Registered Worker, or a User authorised by the Customer or the Supplier on the Customer’s behalf, for the purpose of using the Software or facilitating the Customer’s use of the Software.

“Customer Materials”: the Customer Data together with all other content, materials, logos, and/or other creative, graphic and/or design assets uploaded onto the Software by the Customer and/or made available to the Supplier by the Customer under this Agreement.

“Data Protection Legislation”: all applicable data protection and privacy legislation in force from time to time in the UK, including the General Data Protection Regulation ((EU) 2016/679); the GDPR as defined in section 3(10) (as supplemented by section 205(4)) of the DPA 2018 (UK GDPR); the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

“Digital Processing Hours”: means the signed off digital timesheet hours that can be used by the Customer to generate digital timesheets.

“Digital Processing Introductory Bundle Expiry”: has the meaning given in clause 7.8.

“Documentation”: any instructions, guidance or other content relating to the Services provided or made available to the Customer by the Supplier.

“Due Date”: means (a) in relation to the first invoice and the invoice(s) for the Implementation Services and any Additional Services (if applicable), the date thirty (30) days after a valid invoice has been received; and (b) in relation to subsequent invoices, the [seventh (7th)] day of each month or the next Working Day.

“Effective Date”: the date that the Software is first made available to the Customer.

“Fees”: the Implementation Fees, Subscription Fees, Digital Processing Fees, Shift Sharing Fees, Additional Services Fees, Excess Usage Fees, Termination Fees, Master Vendor System Fees and any other fees paid or payable by the Customer to the Supplier in connection with this Agreement (including without limitation as set out in the Order Form and any Supplementary Order Form).

“Hours Processed”: means the hours processed and signed off for the purposes of generating a digital timesheet.

“Implementation Services”: the services as set out in the Order Form or an applicable Supplementary Order Form.

“Initial Subscription Term”: has the meaning given in the Order Form.

“Intellectual Property Rights”: any and all patents, copyrights (including future copyrights), design rights, trade marks, service marks, domain names, trade secrets, know-how, database rights, and all other intellectual property rights, whether registered or unregistered, and including applications for any of the foregoing and all rights of a similar nature which may exist anywhere in the world.

“Longstop Date”: the date referred to as such in the Order Form.

“Master Vendor System”: the Supplier’s second tier supplier management system which allows Customers to share shifts to agencies and second tier suppliers as selected in the Order Form and/or any Supplementary Order Form.

“Order Form”: the first order document signed by the Parties that defines the original Services and number of Seats originally ordered by the Customer and the related Fees.

“Personal data”, “process/processing”, “controller”, “processor” and “data subject” shall have the meanings ascribed to them in the Data Protection Legislation.

“Registered Workers”: means those workers who have a worker record on the Software which provides them with limited access to certain features on the mobile interface Software including, visibility of the Registered Worker’s own shifts, Availability Management and Worker Compliance.

“Renewal Period”: has the meaning given in clause 13.1.

“Seats”: the maximum number of individual Users who are able to access the Services on any given day.

“Services”: has the meaning given in the Order Form together with any Supplementary Order Form.

“Shift Hours Shared”: means the shift hours shared by the Customer with agencies and second tier suppliers for the purpose of seeking workers and personnel from those agencies and second tier suppliers to fill shifts for the Customer.

“Shift Sharing Introductory Bundle Expiry”: has the meaning given in clause 7.9.

“SLA”: the service level agreement that defines the applicable service levels under this Agreement, as available at: [Panther SLA](#) (and as the Supplier may update from time to time).

“Software”: the Supplier’s Panther software as a service, including any standard software updates deployed by the Supplier from time to time, provided as part of the Services by the Supplier to the Customer under this Agreement, as available at: [Panther Features](#) (and as the Supplier may update from time to time).

“Subscription Term”: the Initial Subscription Term together with any subsequent Renewal Period as defined in clause 13.1.

“Supplementary Order Form”: any additional order form that supplements (but unless expressly agreed in writing, does not replace) the Order Form for any Additional Services signed by the Parties for Additional Services, substantially in the same form as the Order Form or such other form as the Parties may agree from time to time in writing.

“Supplier IP”: has the meaning given in clause 9.1.

“Hosting and Support Services”: the services provided by the Supplier or its sub-contractors in accordance with the SLA.

“Users”: those individuals who have been granted access by the Customer to use the Software which for clarity, includes the Admin User and agencies or second tier suppliers granted access by the Customer through the Master Vendor System, but excludes Registered users.

“Working Day”: Monday to Friday excluding UK Bank and statutory holidays.

“Working Hours”: means 0900 to 1730 UK time on a Working Day,

2. SUBSCRIPTIONS

2.1 Subject to the terms of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable, non-sublicensable, revocable (only for breach of this Agreement) right to permit:

- (a) the Users to access the Software;
- (b) the Admin User to access the Software and to upload the Customer Data onto the Software in order to use the Software for internal business purposes, the Admin User shall have the right to set certain additional parameters in relation to the Software as approved or permitted by the Supplier (**“Admin User Rights”**); and
- (c) the Registered Workers to have limited access to certain features on the mobile interface Software including visibility of the Worker’s own shifts, Availability Management and Worker Compliance,

in each case, only during the Subscription Term and solely for internal business purposes.

2.2 Any other User who has been authorised by the Customer to upload the Customer Data onto the Software shall have the right to do so in order to use the Software for internal business purposes.

- 2.3 The Customer undertakes and shall procure that:
- (a) the maximum number of Users using the Software at any given time shall not exceed the number of Seats it has purchased as specified in the Order Form, any Supplementary Order Form or pursuant to clause 8.8 (in aggregate);
 - (b) only the Admin User and not the other Users shall exercise the Admin User Rights; and
 - (c) each User and Registered Worker shall keep a secure and confidential password for his access to the Software.
- 2.4 The Supplier reserves the right to monitor or audit the Customer's use of the Services from time to time, including with respect to the number of Users, Admin Users or other agreed usage limits. Where such monitoring reveals that the Customer has exceeded any agreed usage limits, the Supplier reserves the right to charge the Customer for additional Seats in accordance with the Order Form.
- 2.5 The Customer shall not and shall procure that its Users and Registered Workers shall not access, store, distribute or transmit any software, code, file or programme which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network (including without limitation worms, trojan horses, viruses and other similar things or devices), or any material during the course of its access to the Software that: (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing, or offensive (including without limitation racially or ethnically offensive); (b) facilitates illegal activity; (c) depicts sexually explicit images; (d) promotes unlawful violence; (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or (f) in a manner that is otherwise illegal or causes damage or injury to any person or property; and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to the Software or to any material that breaches this clause.
- 2.6 The Customer shall not and shall procure that its Users and Registered Workers shall not:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by the Parties and/or except to the extent expressly permitted under this Agreement: (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or (ii) attempt to decompile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
 - (b) access all or any part of the Software in order to build a product or service which competes with the Software or the Services; or
 - (c) use the Software and the Services except as authorised in writing by the Supplier or as permitted under this Agreement.
- 2.7 The Customer shall prevent any unauthorised access to, or use of, the Software and the Services and, upon becoming aware of any such unauthorised access or use, promptly notify the Supplier.
- 2.8 The Customer shall be liable for the acts and omissions of the Users and Registered Workers in connection with their use of the Software and in relation to the Services as if they were the Customer's own.

3. SERVICES

- 3.1 The Supplier shall, during the Subscription Term, provide the Services to the Customer on and subject to the terms of this Agreement.
- 3.2 The estimated timetable for the performance of the Implementation Services is set out in the Order Form or an applicable Supplementary Order Form.
- 3.3 In the event the Customer requires the Supplier to perform any Additional Services, the Parties shall enter into a Supplementary Order Form for the provision of these Additional Services, and the fees for any such Additional Services shall be calculated in accordance with the rate card in the relevant Supplementary Order Form.
- 3.4 The Supplier may sub-contract some of its obligation under this Agreement. In the event that the Supplier has sub-contracted any of its obligations under this Agreement, subject to clause 7.11, the Supplier will remain liable for any breach of this Agreement caused by its sub-contractors, save to the extent the Supplier's breach of this Agreement or negligence is caused by the third party hosting provider in which case the Supplier's liability to the Customer is hereby excluded. To the extent the sub-contracting involves any processing of personal data, the Supplier can provide the details of the sub-processors to the Customer on request.

4. CUSTOMER MATERIALS AND DATA PROTECTION

- 4.1 The Customer shall own all right, title and interest in and to all of the Customer Materials and shall have sole responsibility for the legality, non-infringement, reliability, integrity, accuracy and quality of the Customer Materials.
- 4.2 The Customer hereby grants to the Supplier a non-exclusive, non-transferable right to use the Customer Materials strictly to the extent necessary for the Supplier to provide the Services.
- 4.3 The Customer shall only upload to the Software, or disclose, submit or provide to the Supplier, Customer Data as necessary for the Supplier to provide the Services to the Customer.
- 4.4 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier.
- 4.5 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:
- (a) the subject matter and duration of the processing, nature and purpose of the processing, types of Customer personal data and categories of data subjects are set out in Appendix A to this Agreement;
 - (b) both parties will comply with all applicable requirements of the Data Protection Legislation applicable to them.
 - (c) subject to clause 4.5(d), the Customer acknowledges and agrees that the personal data may be transferred or stored outside the European Economic Area in order to carry out the Services and the Supplier's other obligations under this Agreement;
 - (d) where personal data is transferred outside the European Economic Area, the transfer shall be affected by way of a legally enforceable safeguarding mechanism in circumstances where this is required by the applicable Data Protection Legislation;
 - (e) the Customer shall ensure that it has and will maintain all necessary consents and permissions, including from relevant third parties, as required by the Data Protection Legislation or has another lawful basis, for the transfer, uploading and processing of personal data, such that the Customer is entitled to allow the Admin Users, the Registered Worker and candidates to lawfully upload the relevant personal data onto the Software and/or transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf;
 - (f) the Supplier shall, taking into account the nature of the Services and at the Customer's cost, provide reasonable assistance to the Customer, insofar as this is possible, to fulfil its obligations as a data controller in respect of data security; data protection impact assessments; and prior consultation with supervisory authorities;
 - (g) the Supplier shall inform the Customer in writing without undue delay of any accidental or unlawful destruction or accidental loss or damage, alteration, unauthorized disclosure or access to Customer Data and assist the Customer (at the Customer's cost) with its obligation, in accordance with Data Protection Legislation applicable to the Customer, to notify a security breach to the competent supervisory authorities and individuals, to the extent that the Supplier has relevant information for the Customer to meet its notification obligations.
 - (h) the Supplier shall ensure that its personnel are subject to appropriate obligations of confidentiality;
 - (i) the Supplier shall process the personal data only in accordance with the terms of this Agreement, applicable Data Protection Legislation and any documented instructions reasonably given by the Customer from time to time unless required to do otherwise by EU law or the law of the United Kingdom to which the Supplier is subject. In which event, the Supplier shall inform the Customer of the legal requirement before processing the Customer personal data other than in accordance with the Customer's instructions, unless the same law prohibits the Supplier from doing so on important grounds of public interest;
 - (j) the Supplier shall inform the Customer if the Supplier becomes aware of an instruction that, in its opinion, infringes the Data Protection Legislation applicable to the Customer;
 - (k) each party shall take appropriate technical and organisational measures to protect the Customer Data against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage and the Supplier can provide details of the technical and organisational measures it has taken to the Customer on request; and

- (l) The Customer hereby consents to the Supplier engaging the sub-processors listed at: www.panther-software.co.uk to process the Customer personal data on its behalf. The Supplier shall ensure that any sub-processors are subject to contractual obligations which are the same as or equivalent to those imposed on the Supplier under this Agreement except in the case of Microsoft providing Azure hosting services which shall be subject to Microsoft's standard terms. The Supplier will notify the Customer of any changes to its sub-processors by updating the sub-processor list on its website prior to providing that sub-processor with access to the Customer personal data. The Customer acknowledges and agrees that it is responsible for monitoring the sub-processor list on the Supplier's website.

5. SUPPLIER'S OBLIGATIONS

- 5.1 Subject to clause 4.5(e), the Supplier warrants and undertakes that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.
- 5.2 In its provision of the Services to the Customer, the Supplier shall:
 - (a) provide the Services with reasonable skill and care;
 - (b) use reasonable endeavours to meet any dates and targets for performance of the Implementation Services, Hosting and Support Services and Additional Services agreed with the Customer, but such dates shall be estimates only and time will not be of the essence in relation to them;
 - (c) ensure that the Software complies in all material respects with the Documentation and product description;
 - (d) use reasonable endeavours to maintain the availability of the Services in accordance with the SLA; and
 - (e) provide reasonable notice in advance of any scheduled maintenance.
- 5.3 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

6. CUSTOMER'S OBLIGATIONS

- 6.1 The Customer shall:
 - (a) provide the Supplier with:
 - (i) all reasonable co-operation in relation to this Agreement; and
 - (ii) all reasonable access to such information as may be required by the Supplier, in order to provide the Services, including but not limited to Customer Materials, security access information and configuration services;
 - (b) comply with all applicable laws and regulations with respect to its activities under this Agreement;
 - (c) be solely responsible for any User's and Registered Worker's breach of this Agreement and for all activities on the Software that occur through a User's or Registered Worker's use of the Software;
 - (d) obtain and shall maintain all necessary licences, consents, and permissions necessary for it to provide and/or make available the Customer Materials under this Agreement;
 - (e) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;
 - (f) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

7. DISCLAIMERS

- 7.1 To the extent permitted by applicable law, the Software is provided "as-is" and the Supplier hereby disclaims and excludes all express or implied representations, warranties and conditions regarding the Software, including for fitness for a particular purpose and non-infringement of any Intellectual Property Rights.

- 7.2 The Supplier shall have no liability under this Agreement to the extent any such liability is caused by use of the Software and the Services contrary to the Supplier's instructions, or modification or alteration of the Software by any party other than the Supplier or the Supplier's duly authorised contractors, subcontractors or agents.
- 7.3 The Supplier does not warrant that the Customer's use of the Software and the Services will be uninterrupted or error-free; or that the Software, the information obtained by the Customer through the Software or the Services will meet the Customer's requirements.
- 7.4 The Supplier does not warrant that, the Customer Data uploaded to the Software, the digital timesheets, or any other information generated by the Software which is relied upon the Customer, is accurate or compliant with the relevant regulatory requirements. The Customer must validate any Customer Data and any information generated by the Software.
- 7.5 The health and safety of the Customer's personnel is (as between the Parties) solely the Customer's responsibility. To the extent permitted by law and subject to clause 12.1, the Supplier excludes all liability for any losses suffered by the Customer arising as a result of or in connection with any inaccuracies in the Customer Data and/or information generated by the Software.
- 7.6 If the Supplier is provided with authorisation or login details by the Customer in order to access and scrape data from third party sites or systems for the purposes of providing the Software and the Services, the Customer shall ensure that it has the right to provide such access to the Supplier for this purpose and the Customer shall be liable for any claims made against or losses or costs suffered by the Supplier in connection with such activities.
- 7.7 The Supplier does not warrant that any data scraped from or imported from third party sites for the purposes of providing the Software and the Services to the Customer is accurate and it shall not be liable for any losses suffered by the Customer as a result of any inaccuracies or errors in such data.
- 7.8 It is the Customer's responsibility to ensure that it uses any Digital Processing Introductory Bundle, as specified in the Order Form or a Supplementary Order Form, before the end of each calendar year ("**Digital Processing Introductory Bundle Expiry**"). If the Customer fails to use the Digital Processing Introductory Bundle before its applicable Digital Processing Introductory Bundle Expiry, it shall have no right to roll over or use the remaining hours in the Digital Processing Introductory Bundle.
- 7.9 It is the Customer's responsibility to ensure that it uses any Shift Sharing Introductory Bundle as specified in the Order Form or a Supplementary Order Form, before the end of each calendar year ("**Shift Sharing Introductory Bundle Expiry**"). If the Customer fails to use the Shift Sharing Introductory Bundle before its applicable Shift Sharing Introductory Bundle Expiry, it shall have no right to roll over or use the remaining shifts in the Shift Sharing Introductory Bundle.
- 7.10 The availability of the Services and the Software is dependent on the availability of Microsoft's Azure hosting services and the service levels offered by Microsoft for those services. If the Microsoft Azure services relevant to the Services are unavailable, then the Services may be unavailable as a result, and if so, notwithstanding any provision in any other document forming part of this Agreement, the Supplier shall not be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement.

8. CHARGES AND PAYMENT

- 8.1 The Supplier shall issue the first invoice to the Customer for the Fees (except for the Implementation Fees, which shall be invoiced separately in accordance with the terms specified in the Order Form and any Supplementary Order Form) in the amounts and on the terms specified in the Order Form and any Supplementary Order Form on the earlier of: the Effective Date or the Longstop Date. If, however, the Parties agree that completion of the Implementation Services has been delayed solely as a result of an act or omission by the Supplier, the first invoice shall be issued on the Effective Date. If the first invoice is for a period of less than a month, the Fees set out in the first invoice will be calculated on a pro-rata basis. Thereafter, the Supplier shall issue an invoice to the Customer for the applicable Fees on the terms specified in the Order Form and any Supplementary Order Form on the first day of each month during the Subscription Term.
- 8.2 Except in the case of the first invoice and the invoice(s) for the Implementation Services and any Additional Services (if applicable), which shall be paid by credit card, debit card or bank transfer, the Customer shall

pay each Supplier invoice on the payment terms specified in the Order Form and any Supplementary Order Form by direct debit on the [seventh (7th)] day of each month or the next Working Day. This clause shall survive termination or expiry of the Agreement until the final payment for the Fees has been debited.

- 8.3 [It is the Customer's responsibility to ensure that it cancels its direct debit if this Agreement is terminated for any reason or expires.]
- 8.4 If the Supplier has not received payment within 30 days after the Due Date, and without prejudice to any other rights and remedies of the Supplier:
- (a) the Supplier may, without liability to the Customer, disable the Customer's and all Users' and Registered Workers' password, account and access to all or part of the Software and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; or
 - (b) terminate this Agreement with immediate effect.
- 8.5 Interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of HSBC Bank PLC from time to time, commencing on the due date and continuing until such time as the overdue payment (including interest) is fully paid.
- 8.6 All amounts and fees stated or referred to in this Agreement are exclusive of all taxes, including without limitation any value added tax and/or withholding taxes. Value added tax shall be added to the Supplier's invoice(s) at the appropriate rate.
- 8.7 The Customer shall make all payments under this Agreement free and clear of any deduction or withholding of any kind, save only as may be required by law. If any such withholding or deduction is required, the Customer shall, at the same time as making the payment to which the withholding or deduction relates, pay to the Supplier such additional amount as will, after the deduction or withholding has been made, leave the Supplier with the same total amount that it would have received if no such withholding or deduction had been required.
- 8.8 Before the end of the Initial Subscription Term or any Renewal Period the Supplier will be entitled to increase the Fees upon prior notice to the Customer in accordance with the Fee Increase Notice Period. Such increase in the Fees will be deemed to be accepted by the Customer unless the Customer notifies the Supplier of termination in accordance with the Termination Notice Period and in the case of any increase, the Order Form and any Supplementary Order Form shall be deemed to have been amended accordingly.
- 8.9 The Customer shall be entitled to add licences to its subscription of the Software at any time by notifying the Supplier in writing. Upon notice being given, the licence shall be added to the Customer's subscription immediately and Supplier shall issue an invoice for the additional Subscription Fees, such Fees to be pro-rated for the remainder of the current Subscription Term. The new total licence number, and corresponding Fees, shall apply upon renewal of the Subscription Term (if applicable).
- 8.10 The Customer shall be entitled to add the Master Vendor System to its subscription of the Software at any time by entering into a Supplementary Order Form with the Supplier. Such Fees payable in accordance with any Supplementary Order Form will be pro-rated for the remainder of the then current Subscription Term.

9. PROPRIETARY RIGHTS

- 9.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Software (excluding the Customer Materials) together with any/all developments to the Software provided under any Additional Services ("**Supplier IP**"). Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, Intellectual Property Rights, or any other rights or licences in respect of the Supplier IP.
- 9.2 The Customer acknowledges and agrees that the Supplier has used and shall continue to incorporate open source software into the Software and the Services in the Supplier's sole discretion. Any open source software incorporated in the Software is licensed directly to the Customer on the relevant terms that apply and the Supplier is not liable to the Customer in any way in connection with any open source software incorporated in the Software.
- 9.3 The Customer retains all right, title and interest in and to the Customer Materials.

10. CONFIDENTIALITY

- 10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include

information that: (a) is or becomes publicly known other than through any act or omission of the receiving party; (b) was in the other party's lawful possession before the disclosure; (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; (d) is independently developed by the receiving party; or (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

- 10.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not disclose the other's Confidential Information to any third party, or use the other's Confidential Information for any purpose other than in connection with the performance of its obligations or exercise of its rights under this Agreement.
- 10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 10.4 Neither party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 10.5 This Clause 10 shall survive termination or expiry of this Agreement.

11. INDEMNITY

- 11.1 The Customer shall indemnify the Supplier, its officers, directors and employees against any claim that the Customer Materials infringe any Intellectual Property Rights, provided that (a) the Customer is given prompt notice of any such claim; (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim; and (c) the Customer is given sole authority to defend or settle the claim.
- 11.2 The Supplier shall indemnify and hold harmless the Customer, its officers, directors and employees against any claim that the Software infringes any Intellectual Property Rights (but in the case of patents, only those UK patents granted as of the Effective Date) excluding in respect of any open source software used in the Software, provided that: (a) the Supplier is given prompt notice of any such claim; (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim; and (c) the Supplier is given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of any claim under this clause, the Supplier may procure the right for the Customer to continue using the Software and the Services, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement on notice to the Customer without any additional liability to the Customer.
- 11.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on: (a) a modification of the Services or the Software by anyone other than the Supplier; or (b) the Customer's use of the Software or the Services in a manner contrary to the written instructions given to the Customer by the Supplier.
- 11.5 The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any Intellectual Property Rights.

12. LIMITATION OF LIABILITY

- 12.1 Nothing in this Agreement excludes or limits (a) the Customer's obligation to pay the Fees or (b) the liability of either party: (i) for death or personal injury caused by negligence; (ii) for fraud or fraudulent misrepresentation, or (iii) for any other liability which cannot be limited or excluded under applicable law.
- 12.2 Subject to clause 12.1, neither party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for: (a) any loss of profits or revenue, (b) loss of business, (c) depletion of goodwill, (d) loss or corruption of data or information, or (e) any special, indirect or consequential loss, in each case however arising under or in connection with this Agreement.
- 12.3 Subject to clause 12.1, 12.2 and 12.4, and save in relation to the indemnity granted in clause 11.1, each party's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising out of or in connection with this Agreement shall be limited to one hundred percent (100%) the total Fees paid during the 12 months immediately preceding the date on which the act or omission giving rise to the claim occurred.
- 12.4 In the event that the total liability cap under clause 12.3 has been fully exhausted, then solely in respect of the Supplier's liability under or in connection with any and all breaches of clause 4.5 and/or clause 11.2,

the Supplier's total liability to the Customer, in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, shall be increased by an additional fifty percent (50%) of the total Fees paid during the 12 months immediately preceding the date on which the act or omission giving rise to the claim occurred.

- 12.5 All warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.

13. TERM AND TERMINATION

- 13.1 This Agreement shall, unless terminated early in accordance with its terms, commence on the Contract Start Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each a "**Renewal Period**"), unless either party notifies the other party of termination, in writing, in accordance with the Termination Notice Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period.
- 13.2 The Supplier may terminate this Agreement with immediate effect by giving notice in writing if the Supplier has not received payment of an undisputed invoice within 30 days after the due date.
- 13.3 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party commits any material breach of this Agreement and (if capable of remedy) such party fails to remedy that breach within 30 days after being notified in writing to do so; or
 - (b) the other party (i) is unable to pay its debts as defined in section 123 Insolvency Act 1986, (ii) has steps taken for a receiver, administrator or manager to be appointed over the whole or a material part of its business or assets; (iii) is subject to an order being made, a resolution passed or other steps being taken for its winding-up (except for the purposes of a bona fide solvent reorganisation), bankruptcy or dissolution; (iv) proposes or enters into any composition or arrangement with its creditors generally or any class of them; or (v) ceases to carry on business or claim the benefit of any statutory moratorium; or if any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (i) – (v) of this clause.
- 13.4 On termination of this Agreement by the Supplier in accordance with clause 13.3, or in the event that the Customer terminates or purports to terminate this Agreement prior to the end of the Subscription Term or on giving notice of less than the Termination Notice Period (in either case except where the termination or purported termination is in accordance with clause 13.3), the Customer shall pay the applicable Termination Fees to the Supplier as set out in the Order Form.

14. EFFECTS OF TERMINATION

- 14.1 In addition to the provisions of Clause 13, upon termination or expiry of this Agreement for any reason:
- (a) all unpaid Fees for Services which have been provided as at the effective date of termination shall become immediately due to the Supplier and the Supplier shall have the right to issue invoices in respect of Fees for Services which have been provided but not yet invoiced;
 - (b) all licences granted under this Agreement shall immediately terminate and the Customer must cease using the Software, Services and Supplier IP;
 - (c) each party shall return or destroy (as specified by the other party) any Confidential Information, equipment, property, and other items (and all copies of them) belonging to the other party; and
 - (d) where requested by the Customer within fourteen (14) days of the effective date of termination, the Supplier shall return or destroy (as specified by the Customer) all Customer Materials in its possession and control.

15. FORCE MAJEURE

Neither party shall have any liability to the other under this Agreement if it is prevented from or delayed in performing its obligations, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

16. GENERAL

- 16.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties.
- 16.2 The Supplier may assign, transfer, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 16.3 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 16.4 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 16.5 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.
- 16.6 The Customer shall not assign any of its rights under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.
- 16.7 This Agreement does not confer any rights on any person or party (other than the parties to this Agreement) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 16.8 Any notice required to be given under this Agreement shall be in writing (which shall include email) and shall be sent via email or delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its email or address set out in this Agreement, or such other address as may have been notified by that party for such purposes. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during Working Hours, at 9 am on the first Working Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice delivered by email shall be deemed to have been received when delivered to the email address set out in the Order Form provided an auto-generated delivery receipt is received by the sender (or if delivery is not during Working Hours, at 9 am on the first Working Day following delivery).
- 16.9 This Agreement and any dispute or claim arising out of or in connection (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement (including non-contractual disputes or claims).
- 16.10 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

Appendix A: Data Processing

Data categories	The personal data inputted by: a) the Admin User, or other User, and Registered Worker, in each case authorised by the Customer or candidates; or b) the Supplier on the Customer's behalf, in each case for the purpose of using the Software or facilitating the Customer's use of the Software. These may include, but are not limited to: contact details, employee number, address history and proof of address, results of criminal record checks, police checks, gender, passport and visa information, NI number, bank details, professional qualification ID numbers, GDPR consent forms, qualification certificates, training certificates, fitness to work certificates, COVID risk assessments and certificates, employment history and references, appraisals and assessments, records of complaints, insurance certificates, compliance certificates, ID photograph, interview records, CV, availability schedules and reasons, charge and pay rates, job categories, payment terms and methods, currencies & FX rates, VAT codes, site addresses, shift data, timesheet data, ratings, login dates & times and IP address, GPS location, digital signatures.
Categories of Data Subjects	Customers; employees and personnel (including contractors) of the Customer; candidates and workers of the Customer; clients and contacts of the Customer.
Nature of processing	The provision by the Supplier of the Software and Services.
Purposes	The Supplier will process personal data to provide the Services pursuant to this Agreement.
Duration	Subject to the deletion or return of personal data section of this Agreement, the Supplier will process personal data for the duration of the Agreement, unless otherwise agreed in writing.