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## TR Recruiter Terms & Conditions of Trade

### 1. Definitions

1.1 In this Agreement, except to the extent expressly provided otherwise:

**"Access Credentials"** means the usernames, passwords and other credentials enabling access to the Hosted Services, including both access credentials for the User Interface and access credentials for the API;

**"Account Manager"** means the TR Account Manager as set out in the Order Form, or their authorised successor;

**"Agreement"** means this agreement including any Schedules, and any amendments to this Agreement from time to time;

**"API"** means the application programming interface for the Hosted Services defined by the Provider and made available by the Provider to the Customer;

**"Business Day"** means any weekday other than a bank or public holiday in England;

**"Business Hours"** means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

**"Charges"** means the following amounts:

- (a) the amounts specified on the Customer Service/Purchase Order Form
- (b) such amounts as may be agreed in writing by the parties from time to time; and

**"Customer Confidential Information"** means:

- (a) any information disclosed by or on behalf of the Customer to the Provider during the Term OR at any time before the termination of this Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
  - (i) was marked or described as "confidential"; or
  - (ii) should have been reasonably understood by the Provider to be confidential; and

- (b) the Customer Data;

**"Customer Data"** means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer (but excluding analytics data relating to the use of the Platform and server log files);

**"Customer Personal Data"** means any Personal Data that is processed by the Provider on behalf of the Customer in relation to this Agreement, but excluding *personal data* with respect to which the Provider is a data controller;

**"Data Protection Laws"** means the EU GDPR and the UK GDPR and all other applicable laws relating to the processing of Personal Data;

**"Default Date"** means the date the Customer's due payment is declined;

**"Deletion"** means the Customer is permanently denied access to the services and all data stored (under Clause 7) is deleted from the Provider's infrastructure, and no longer be available to the Customer (with the exception of accounting data pertaining to the operation of the Customer account);

**"Documentation"** means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer;

**"Effective Date"** means the date of execution of this Agreement as set out on the Customer Service/Purchase Order Form ;

**"Extension Period"** means where the Initial Period has been Rolled-over for additional Minimum Term(s);

**"EU GDPR"** means the General Data Protection Regulation (Regulation (EU) 2016/679) and all other EU laws regulating the processing of Personal Data, as such laws may be updated, amended and superseded from time to time;

**"Final Invoice"** means an invoice raised by the Provider to the Client which shall include the subscription charge for any unexpired portion of either the Initial Period or any subsequent Extension Period, together with any usage charges that have not been invoiced;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, epidemics, pandemics, explosions, fires, floods, riots, terrorist attacks and wars);

**"Hosted Services"** means TR Recruiter, as specified in the Hosted Services Specification, which will be made available by the Provider to the Customer as a service via the internet in accordance with this Agreement;

**"Hosted Services Defect"** means a defect, error or bug in the Platform having an adverse effect OR a material adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer or any person authorised by the Customer to use the Platform or Hosted Services;
- (b) any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer;

- (c) a failure of the Customer to perform or observe any of its obligations in this Agreement; and/or
- (d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;

**"Hosted Services Specification"** means the specification for the Platform and Hosted Services set out in Section 1 of Schedule 1 (Hosted Services particulars) and in the Documentation;

**"Initial Period"** means the period for which this agreement shall be in operation as set out in the Customer Purchase/Service Order Form;

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Minimum Period"** means 12 months from the Effective Date, or 12 months from the date the Agreement is deemed to have rolled-over;

**"Mobile App"** means the mobile application that from time to time is made available by the Provider through the *Google Play Store* and the *Apple App Store*;

**"Order Form"** means the Customer Purchase / Service Order Form signed by the Customer prior to commencement of service.

**"Personal Data"** means personal data under any of the Data Protection Laws;

**"Platform"** means the platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

**"Rollover"** means in the absence of Notice of Termination from the Customer, the contract shall, at the end of the initial period, be renewed for the Minimum Period.

**"Schedule"** means any schedule attached to the main body of this Agreement;

**"Services"** means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement;

**"Suspension"** means the Customer is temporarily denied access to the Services and the data stored (under Clause 7);

"**Support Services**" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

"**Supported Web Browser**" means the current release from time to time of Microsoft Edge, Mozilla Firefox, Google Chrome or Apple Safari, or any other web browser that the Provider agrees in writing shall be supported;

"**Term**" means the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2;

"**UK GDPR**" means the EU GDPR as transposed into UK law (including by the Data Protection Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) and all other UK laws regulating the processing of Personal Data, as such laws may be updated, amended and superseded from time to time; and

"**User Interface**" means the interface for the Hosted Services designed to allow individual human users to access and use the Hosted Services.

## 2. Credit

2.1 This document was created using a template from Docular.

## 3. Term

3.1 This Agreement shall come into force upon the Effective Date.

3.2 This Agreement shall continue in force indefinitely OR until *date*, at the beginning of which this Agreement shall terminate automatically OR until *event*, upon which this Agreement shall terminate automatically, subject to termination in accordance with Clause 18 or any other provision of this Agreement.

## 4. Hosted Services

4.1 The Provider shall provide, or shall ensure that the Platform will provide, to the Customer upon the Effective Date the Access Credentials necessary to enable the Customer to access and use the Hosted Services.

4.2 The Provider hereby grants to the Customer a non-exclusive license to use the Hosted Services by means of the User Interface and the API for the internal business purposes of the Customer in accordance with the Documentation during the Term.

4.3 The license granted by the Provider to the Customer under Clause 4.2 is subject to the following limitations:

- (a) the User Interface may only be used through a Supported Web Browser or the Mobile App;
- (b) the User Interface may only be used by the officers and authorised employees of the Customer;

- (c) the API may only be used by an application or applications approved by the Provider in writing and controlled by the Customer.
- 4.4 Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the license granted by the Provider to the Customer under Clause 4.2 is subject to the following prohibitions:
- (a) the Customer must not sub-license its right to access and use the Hosted Services;
  - (b) the Customer must not permit any unauthorised person or application to access or use the Hosted Services;
  - (c) the Customer must not use the Hosted Services to provide services to third parties unless specified on the Order Form ;
  - (d) the Customer must not republish or redistribute any content or material from the Hosted Services;
  - (e) the Customer must not make any alteration to the Platform, except as permitted by the Documentation; and
  - (f) the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Services without the prior written consent of the Provider.
- 4.5 The Customer shall implement and maintain reasonable security measures relating to the Access Credentials to ensure that no unauthorised person or application may gain access to the Hosted Services by means of the Access Credentials.
- 4.6 The Provider shall use all reasonable endeavours to maintain the availability of the Hosted Services to the Customer at the gateway between the public internet and the network of the hosting services provider for the Hosted Services, but does not guarantee 100% availability.
- 4.7 For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:
- (a) a Force Majeure Event;
  - (b) a fault or failure of the internet or any public telecommunications network;
  - (c) a fault or failure of the Customer's computer systems or networks;
  - (d) any breach by the Customer of this Agreement; or
  - (e) scheduled maintenance carried out in accordance with this Agreement.
- 4.8 The Customer must comply with Acceptable Use Policy, and must ensure that all persons using the Hosted Services with the authority of the Customer or by means of the Access Credentials comply with Acceptable Use Policy.

- 4.9 The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.
- 4.10 The Customer must not use the Hosted Services in any way that uses excessive Platform resources and as a result is liable to cause a material degradation in the services provided by the Provider to its other customers using the Platform; and the Customer acknowledges that the Provider may use reasonable technical measures to limit the use of Platform resources by the Customer for the purpose of assuring services to its customers generally.
- 4.11 The Customer must not use the Hosted Services:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
  - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 4.12 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.
- 4.13 The Provider may suspend the provision of the Hosted Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue.

## **5. Scheduled maintenance**

- 5.1 The Provider may from time to time suspend the Hosted Services for the purposes of scheduled maintenance to the Platform, providing that such scheduled maintenance must be carried out in accordance with this Clause 5.
- 5.2 The Provider shall where practicable give to the Customer at least 5 Business Days' prior written notice of scheduled maintenance that will, or is likely to, affect the availability of the Hosted Services or have a material negative impact upon the Hosted Services.
- 5.3 The Provider shall ensure that all scheduled maintenance is carried out outside Business Hours.
- 5.4 The Provider shall ensure that, during each calendar month, the aggregate period during which the Hosted Services are unavailable as a result of scheduled maintenance, or negatively affected by scheduled maintenance to a material degree, does not exceed 20 hours.

## **6. Support Services**

- 6.1 The Provider shall provide the Support Services to the Customer during the Term.
- 6.2 The Provider shall make available to the Customer an Account Manager.
- 6.3 The Provider shall provide the Support Services with reasonable skill and care OR in accordance with the standards of skill and care.

6.4 The Provider shall respond promptly to all requests for Support Services made by the Customer.

6.5 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue.

## **7. Customer Data**

7.1 The Customer hereby grants to the Provider a non-exclusive license to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement. The Customer also grants to the Provider the right to sub-license these rights to its hosting, connectivity and telecommunications service providers, subject to any express restrictions elsewhere in this Agreement.

7.2 The Customer warrants to the Provider that the Customer Data OR the Customer Data when used by the Provider in accordance with this Agreement will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

7.3 The Provider shall create a back-up copy of the Customer Data at least daily, shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was taken.

7.4 Within the period of 1 Business Day following receipt of a written request from the Customer, the Provider shall use all reasonable endeavours to restore to the Platform the Customer Data stored in any back-up copy created and stored by the Provider in accordance with Clause 7.3. The Customer acknowledges that this process will overwrite the Customer Data stored on the Platform prior to the restoration.

## **8. Mobile App**

8.1 The parties acknowledge and agree that the use of the Mobile App, the parties' respective rights and obligations in relation to the Mobile App and any liabilities of either party arising out of the use of the Mobile App shall be subject to separate terms and conditions, and accordingly this Agreement shall not govern any such use, rights, obligations or liabilities.

## **9. No assignment of Intellectual Property Rights**

9.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

## **10. Charges and Invoicing**

10.1 The Customer shall pay the Charges to the Provider in accordance with this Agreement.

- 10.2 The charges shall be applied in accordance with the Order Form. Prices are fixed for the Initial Period in accordance with the Order Form.
- 10.3 All amounts stated in or in relation to this Agreement are, exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.
- 10.4 The Provider may elect to vary any element of the Charges by giving to the Customer written notice of the variation not less than 60 days notice prior to the expiration of either the Initial Period, or where relevant, the expiration of the Extension Period(s).
- 10.5 Subscriptions are applied in advance at the beginning of the month for that month. Usage charges, where applicable, are charged in arrears. Each monthly invoice shall contain the subscription charge for the month of the invoice, together with a detailed itemisation of any usage charges incurred during the previous month.
- 10.6 The Customer when raising a query on an invoice, must set out in an email addressed to their Account Manager:
  - (a) the invoice number
  - (b) the charge(s) disputed
  - (c) the reason for the dispute

Within seven working days of the invoice date. The Account Manager will respond by email within 4 working days of the date of the email received, either setting out why the disputed amount is owed or acknowledging that a Credit Note will be raised. The Customer will not be entitled to halt payment, or attempt to reverse payment (by way of a charge back) of the disputed invoice or subsequent invoices without a breach of Clause 11.4.

## **11. Payments & Credit Notes**

- 11.1 The Customer will not be eligible to use the Services until they have presented a valid method of acceptable payment.
- 11.2 Payment will be collected, at the latest within 3 working days of the invoice date.
- 11.3 The Customer must pay the Charges by debit card, credit card or direct debit (using such payment details as are notified by the Provider to the Customer from time to time).
- 11.4 If the Customer does not pay any amount due to the Provider under this Agreement, the Provider may:
  - (a) without notice immediately suspend the Customer's access to the Service, and all data stored by the Provider on the Customer's behalf under Clause 7 until a valid and acceptable means of payment has been provided that has cleared the outstanding balance due to the Provider
  - (b) within 30 days of the Default Date and when the Customer has not provided a valid and acceptable means of payment that has cleared the outstanding



balance due to the Provider, then the Provider shall without notice raise a Final Invoice;

- (c) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

11.5 Where a credit note has been raised by the Provider, on an invoice where payment has already been made, the Provider shall within 3 working days of the date of the credit note refund the amount of the credit note.

## **12. Provider's confidentiality obligations**

12.1 The Provider must:

- (a) keep the Customer Confidential Information strictly confidential;
- (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality approved in writing by the Customer OR no less onerous than those contained in this Agreement;
- (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Customer Confidential Information; and
- (e) not use any of the Customer Confidential Information for any purpose other than *specify purposes*.

12.2 Notwithstanding Clause 12.1, the Provider may disclose the Customer Confidential Information to the Provider's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work with respect to this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.

12.3 This Clause 12 imposes no obligations upon the Provider with respect to Customer Confidential Information that:

- (a) is known to the Provider before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the Provider; or
- (c) is obtained by the Provider from a third party in circumstances where the Provider has no reason to believe that there has been a breach of an obligation of confidentiality.

- 12.4 The restrictions in this Clause 12 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Provider on any recognised stock exchange.
- 12.5 The provisions of this Clause 12 shall continue in force indefinitely following the termination of this Agreement OR for a period of 5 years following the termination of this Agreement, at the end of which period they will cease to have effect.

### **13. Data protection**

- 13.1 The Provider OR Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.
- 13.2 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with this Agreement.
- 13.3 The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to this Agreement:
- (a) the Personal Data of data subjects falling within the categories specified in Section 1 of Schedule 3 (Data processing information) (or such other categories as may be agreed by the parties in writing); and
  - (b) Personal Data of the types specified in Section 2 of Schedule 3 (Data processing information) (or such other types as may be agreed by the parties in writing).
- 13.4 The Provider shall only process the Customer Personal Data for the purposes specified in Section 3 of Schedule 3 (Data processing information).
- 13.5 The Provider shall only process the Customer Personal Data during the Term and for not more than 30 days following the end of the Term, subject to the other provisions of this Clause 13.
- 13.6 The Provider shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to a third country under the Data Protection Laws), as set out in this Agreement or any other document agreed by the parties in writing.
- 13.7 The Customer hereby authorises the Provider to make the following transfers of Customer Personal Data:
- (a) the Provider may transfer the Customer Personal Data internally to its own employees, offices and facilities in *jurisdiction(s)*, providing that such transfers must be protected by appropriate safeguards;
  - (b) the Provider may transfer the Customer Personal Data to its third party processors in the relevant jurisdictions and may permit its third party processors to make such transfers, providing that such transfers must be protected by any appropriate safeguards identified therein; and

- (c) the Provider may transfer the Customer Personal Data to a country, a territory or sector to the extent that the competent data protection authorities have decided that the country, territory or sector ensures an adequate level of protection for Personal Data, and the relevant data sovereignty laws may require.
- 13.8 The Provider shall promptly inform the Customer if, in the opinion of the Provider, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.
- 13.9 Notwithstanding any other provision of this Agreement, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by applicable law. In such a case, the Provider shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 13.10 The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 13.11 The Provider and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data.
- 13.12 The Provider must not engage any new third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer.
- 13.13 As at the Effective Date, the Provider is hereby authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data, the existing third party sub-processors
- 13.14 The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
- 13.15 The Provider shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 13.15.
- 13.16 The Provider must notify the Customer of any Personal Data breach affecting the Customer Personal Data without undue delay and, in any case, not later than 24 OR 36 OR 72 hours after the Provider becomes aware of the breach.
- 13.17 The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 13

and the Data Protection Laws. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 13.17, providing that no such charges shall be levied with respect to the completion by the Provider (at the reasonable request of the Customer, not more than once per calendar year) of the standard information security questionnaire of the Customer.

13.18 The Provider shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.

13.19 The Provider shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of the Provider's processing of Customer Personal Data with the Data Protection Laws and this Clause 13. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 13.19, providing that no such charges shall be levied where the request to perform the work arises out of any breach by the Provider of this Agreement or any security breach affecting the systems of the Provider.

13.20 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under this Agreement, then the parties shall use their best endeavours promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance.

#### **14. Warranties**

14.1 The Provider warrants to the Customer that:

- (a) the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
- (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement; and
- (c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.

14.2 The Provider warrants to the Customer that:

- (a) the Platform and Hosted Services will conform in all material respects with the Hosted Services Specification;
- (b) the Hosted Services will be free from Hosted Services Defects;
- (c) the Platform will be free from known viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and

- (d) the Platform will incorporate security features reflecting the requirements of good industry practice.
- 14.3 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under English law.
- 14.4 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.
- 14.5 If the Provider reasonably determines, or any third party alleges, that the use of the Hosted Services by the Customer in accordance with this Agreement infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:
  - (a) modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
  - (b) procure for the Customer the right to use the Hosted Services in accordance with this Agreement.
- 14.6 The Customer warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 14.7 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

## **15. Acknowledgements and warranty limitations**

- 15.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.
- 15.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.
- 15.3 The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Hosted Services Specification; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.
- 15.4 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in this Agreement, the Provider does not warrant or represent that the Hosted Services or the use of the

Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

## **16. Limitations and exclusions of liability**

16.1 Nothing in this Agreement will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

16.2 The limitations and exclusions of liability set out in this Clause 16 and elsewhere in this Agreement:

- (a) are subject to Clause 16.1; and
- (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

16.3 The Provider under this Agreement shall not be liable to the Customer in respect of any losses arising out of a Force Majeure Event.

16.4 The Provider under this Agreement shall not be liable to the Customer in respect of any loss of profits or anticipated savings.

16.5 The Provider under this Agreement shall not be liable to the Customer in respect of any loss of revenue or income.

16.6 The Provider under this Agreement shall not be liable to the Customer in respect of any loss of use or production.

16.7 The Provider under this Agreement shall not be liable to the Customer in respect of any loss of business, contracts or opportunities.

16.8 The Provider under this Agreement shall not be liable to the Customer in respect of any loss or corruption of any data, database or software; providing that this Clause 16.8 shall not protect the Provider unless the Provider has fully complied with its obligations under Clause 7.3 and Clause 7.4.

16.9 The Provider under this Agreement shall not be liable to the Customer in respect of any special, indirect or consequential loss or damage.

16.10 The liability the Provider to the Customer under this Agreement in respect of any event or series of related events shall not exceed the total amount paid and payable by the Customer to the Provider under this Agreement in the 3 month period preceding the commencement of the event or events.

16.11 The aggregate liability of the Provider to the Customer under this Agreement shall not exceed the total amount paid and payable by the Customer to the Provider under this Agreement in the 6 month period preceding the commencement of the event or events.

## **17. Force Majeure Event**

17.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

17.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:

- (a) promptly notify the other; and
- (b) inform the other of the period for which it is estimated that such failure or delay will continue.

17.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

## **18. Termination**

18.1 The Customer may terminate this agreement by giving 30 days written notice to the Provider, prior to the end of either the Initial Period, or the Extension Period(s).

18.2 The Provider may terminate this Agreement immediately by giving written notice of termination to the Customer if the Customer commits a material breach of this Agreement.

18.3 Subject to applicable law, either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party:
  - (i) is dissolved;
  - (ii) ceases to conduct all (or substantially all) of its business;
  - (iii) is or becomes unable to pay its debts as they fall due;
  - (iv) is or becomes insolvent or is declared insolvent; or
  - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or

## **19. Effects of termination**

- 19.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 4.12, 8, 11.2, 11.4, 12, 13, 16, 19, 22 and 23.
- 19.2 Except to the extent expressly provided otherwise in this Agreement, the termination of this Agreement shall not affect the accrued rights of either party.
- 19.3 Within 10 days following the termination of this Agreement for any reason the Customer must pay to the Provider any amounts outstanding from invoices including the Final Invoice without prejudice to the parties' other legal rights.

## **20. Notices**

- 20.1 Any notice from one party to the other party under this Agreement must be given by one of the following methods
  - (a) delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery; or
  - (b) sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting,
  - (c) sent by email (with proof of delivery) by the Authorised Signatory on the Order Form (or their authorised replacement) to the Account Manager specified on the Order Form,

providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

- 20.2 The Provider's contact details for notices under this Clause 20 are either the Company's Registered Office if notice is sent under (20).(1)(a) or (b) or to the TR Account Manager's email address as specified on the Order Form.
- 20.3 The addressee and contact details set out in Clause 20.2 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 20.

## **21. Subcontracting**

- 21.1 The Provider may use its affiliates or qualified subcontractors to perform Services, affiliates shall not be considered subcontractors.



- 21.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.
- 21.3 Notwithstanding the provisions of this Clause 21 but subject to any other provision of this Agreement, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

## **22. General**

- 22.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.
- 22.2 No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 22.3 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 22.4 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 22.5 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.
- 22.6 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 22.7 Subject to Clause 16.1, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 22.8 This Agreement shall be governed by and construed in accordance with English law.
- 22.9 The courts of England shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

## **23. Interpretation**

- 23.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
  - (b) any subordinate legislation made under that statute or statutory provision.
- 23.2 The Clause headings do not affect the interpretation of this Agreement.
- 23.3 References in this Agreement to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.
- 23.4 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

**These TR Recruiter Terms and Conditions of Trade shall be in force from 01 January 2022.**