

SUBSCRIPTION TERMS



These Subscription Terms, together with the Order (or a Statement of Work), govern the supply of software and services from Panaseer to the Customer. It is essential that the Customer reads and understands the content of these Subscription Terms and the applicable Order or Statement of Work before signing. By signing the Order or Statement of Work the Customer confirms that it has read these terms and agrees to be bound by them.

The parties may agree Orders for specific Licensed Software and/or Statements of Work for specific Professional Services. The Orders and the Statements of Work shall, together with these Subscription Terms, form the Subscription Contract governing the performance and receipt of such Licensed Software and Professional Services.

1. Definitions and Interpretation

1.1 In the Subscription Contract the following terms have the following meanings:

“AI Functionality” means any feature or component of the Licensed Software that uses machine learning, natural language processing, or other forms of artificial intelligence to generate or predict outputs, insights, or recommendations.

“AI Output” means any content, analysis, or recommendation generated by AI Functionality within the Licensed Software.

"Anonymised Security Data" means Security Data where all information that identifies a Customer, their assets or users has been anonymised. This data may include generic qualifiers regarding the Customer's industry and/or size;

"Applicable Law" means any law, statute, statutory instrument, bylaw, order of a court of competent jurisdiction and any legal requirement of any regulatory, fiscal or governmental body to which the relevant Party is subject, in all cases to the extent in force from time to time and which applies to the relevant Party in undertaking any relevant activity pursuant to or in connection with the Subscription Contract;

"Confidential Information" means all trade secret, confidential or proprietary information of either Party including information concerning its products, services, customers, suppliers, business accounts, financial or contractual arrangements or other dealings, computer systems, test data, software, source and object code, technical information, business methods and development plans, contained in any format, whether or not communicated orally and whether or not marked “confidential”, including the Customer Materials and the Licensed Materials;

“Customer” means the customer as set out in the applicable Order;

"Customer Dependencies" means the obligations of the Customer in Clause 5.1 and any Order;

"Customer Materials" means all documents, data, instructions and other materials and information (excluding any Feedback, Anonymised Security Data and Software Usage Data) made available to Panaseer pursuant to the relevant Order or Statement of Work by or on behalf of the Customer to enable provision of the Professional Services, including such materials as are described in the relevant Order or Statement of Work;

"Data Protection Legislation" means to the extent applicable (i) Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data (General Data Protection

Regulation) (the **"EU GDPR"**); (ii) the Data Protection Act 2018 and EU GDPR as saved into United Kingdom law by virtue of section 3 of the United Kingdom's European Union (Withdrawal) Act 2018 (and regulations made thereunder) (the **"UK GDPR"**); (iii) the EU e-Privacy Directive (Directive 2002/58/EC); and (iv) any and all applicable national data protection laws made under, pursuant to or that apply in conjunction with any of (i), (ii) or (iii); in each case as may be amended or superseded from time to time;

"Decommissioning and Exit Services" means such assistance, which in Panaseer's reasonable opinion, is reasonably necessary to transfer the Customer Materials held by Panaseer to the Customer or (where agreed) a replacement supplier appointed by the Customer;

"Effective Date" means the date on which the last party signs the first Order under this Subscription Contract;

"Feedback" means feedback, suggestions, ideas, enhancement requests, recommendations or other information that the Customer provides to Panaseer and which relates to the Licensed Software;

"Fees" means Panaseer's charges, royalties, fees and other remuneration and expenses described in the relevant Order or Statement of Work or these Subscription Terms, including the Licence Fees;

"Force Majeure Event" means any cause beyond the reasonable control of the affected Party, including any act of God, act of terrorism, governmental act, war, fire, flood, explosion or civil commotion, industrial action (excluding internal industrial action), failure in telecommunications services, or unauthorised interference with either Party's systems or services via the internet;

"Initial Licence Period" means the licence period specified in an Order;

"IPR" means all copyright and related rights, database rights, trade marks, service marks, trade, business and domain names, rights in trade dress, getup, goodwill or to sue for passing off, rights in designs, patents or confidential information (including know-how and trade secrets) and any other intellectual property rights, registered or unregistered, in any part of the world;

"Licence Fees" means the licence fees set out in the relevant Order in respect of the Customer's licence of the Licensed Software;

"Licence Limits" means the limits on the Customer's licence to use the Licensed Software (whether in terms of device numbers, maximum number of end-users and/or data volumes) as specified in the relevant Order;

"Licence Period" means the period(s) of time during which the Licensed Materials are licensed to the Customer under an Order, each beginning on the relevant Order Effective Date and continuing for the Initial Licence Period, plus any Renewal Period;

"Licensed Materials" means all user guides, training materials, specifications and other documents provided by Panaseer to the Customer in respect of the Licensed Software and/or the Professional Services;

"Licensed Software" means the software modules specified in the relevant Order, which are licensed to the Customer under that Order;

"Order" means a written order between Panaseer and Customer under these Subscription Terms, detailing the Licensed Software;

"Order Effective Date" means the date of the last signature by a Party to the relevant Order;

"Panaseer" means Panaseer Limited a company registered in England and Wales with company number 09098199 whose registered office is Ashcombe Court, Woolsack Way, Godalming, Surrey, GU7 1LQ;

"Panaseer's Standard Business Hours" means the support hours stated in the Order;

"Permitted Purpose" means the Customer's internal business purposes (which shall not include allowing the use of the Licensed Software by, or for the benefit of, any person other than an employee of the Customer), subject to the Licence Limits;

"Professional Services" means the services expressly described in the relevant Statement of Work and/or Specification;

"Rate Card" means the list of Panaseer's standard rates;

"Renewal Period" means the period described in Clause 15.3;

"Security Data" means security data ingested into the Licensed Software or insights derived from that data;

"Service Commencement Date" means the date specified as such in the relevant Statement of Work;

"Service Year" means each period of twelve consecutive months commencing on the relevant Service Commencement Date or any anniversary of that date;

"Software Usage Data" means usage information that is automatically collected and reported by the Software about how the Software is used by the Customer;

"Specification" means the document attached to or described as such in the relevant Order or Statement of Work setting out the facilities and functions of the Licensed Software and/or the scope and description of the Professional Services;

"Statement of Work" means an agreement entered into between Panaseer and the Customer for the provision of certain services, made pursuant and subject to these Subscription Terms;

"Statement of Work Effective Date" means the date of the last signature by a Party to the relevant Statement of Work or has the meaning given in the relevant Statement of Work;

"Statement of Work Term" has the meaning given in Paragraph 3 of the relevant Statement of Work;

"Statement of Work Year" means each period of twelve consecutive months commencing on the Statement of Work Effective Date or any anniversary of that date;

"Subscription Contract" means these Subscription Terms and each Order and Statement of Work entered into by the Parties;

"Subscription Contract Effective Date" means the date of the last signature by a Party to the first Order;

"Subscription Contract Period" means the period(s) of time during which the Licensed Materials are licensed to the Customer, beginning on the first Order Effective Date and continuing until termination of the final Order;

"Subscription Contract Year" means each period of twelve consecutive months commencing on the Subscription Contract Effective Date or any anniversary of that date;

"Subscription Terms" means Clauses 1 to 20 as set out herein;

"Territory" means the United Kingdom, or such other geographical area(s) that may be specified in the Order or Statement of Work; and

"Variation" has the meaning given to that term in Clause 20.4.

1.2 In this Subscription Contract:

- (a) a reference to a "Clause" is to a Clause of these Subscription Terms;
- (b) the headings are for convenience only and do not affect the interpretation of the Subscription Contract;
- (c) references to any gender include any other gender and the singular includes the plural and vice versa;
- (d) references to a "person" or a "company" include a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (e) a reference to a statute or statutory provision is a reference to it as from time to time amended, consolidated, modified, extended, re-enacted or replaced and includes all statutory instruments, notices or orders made under it; and
- (f) "including", "include" or "includes" shall be deemed to be followed by "without limitation" unless the context requires otherwise.

1.3 In the event of any conflict or inconsistency between these Subscription Terms and an Order or Statement of Work, the Subscription Terms shall take precedence, unless in an Order or Statement of Work a provision of the Subscription Terms is specifically varied or disappplied (in each case, with express reference to the relevant varied or disappplied provision in the Subscription Terms), in which case the provision of the Order or Statement of Work shall take precedence only to the extent of such variation or disapplication.

2. Agreement Of Orders and Statements of Work

2.1 The Customer may from time to time request the supply of Licensed Software. No Licensed Software shall be provided until the Parties have entered into a binding Order.

2.2 The Customer may from time to time request the supply of certain professional or other services. No such services shall be provided until the Parties have entered into a binding Statement of Work. All Statements of Work shall adopt the format and content as agreed between the Parties.

2.3 Where the Customer and Panaseer wish to enter into a Statement of Work pursuant to these Subscription Terms, the Parties shall work together to complete and execute a Statement of Work.

2.4 An Order or a Statement of Work shall not enter into force or become legally binding unless the Order or the Statement of Work has been signed by the authorised representatives of both Parties to it.

2.5 Once an Order or Statement of Work is agreed between the Parties pursuant to Clause 2.4, that Order and Statement of Work shall form part of the Subscription Contract and be governed by these Subscription Terms.

2.6 Except where the context requires otherwise:

- (a) each Order is to be interpreted independently of the other Orders; and
- (b) each Statement of Work is to be interpreted independently of the other Statements of Work; and
- (c) terms defined in a specific Order apply only in relation to that Order and not in relation to any other Orders; and
- (d) terms defined in a specific Statement of Work apply only in relation to that Statement of Work and not in relation to any other Statements of Work.

3. Panaseer Warranty

3.1 Subject to Clause 3.6, Panaseer shall provide the Licensed Software to the Customer as specified in the relevant Order and subject to the terms of these Subscription Terms and the relevant provisions of that Order.

3.2 Panaseer shall perform Professional Services using reasonable care and skill.

3.3 Panaseer shall use reasonable endeavours to:

- (a) make the Licensed Software available at all times; and
- (b) respond to the Customer's queries within a reasonable time frame, during Panaseer's Standard Business Hours, or in accordance with an agreed SLA if applicable.

3.4 Panaseer warrants that throughout the Licence Period, the Licensed Software will be provided using commercially reasonable skill and care, and will comply in all material respects with the Specification, except during any period during which the Decommissioning and Exit Services are provided, when the Parties agree and acknowledge that the Licensed Software may have reduced functionality.

3.5 Panaseer does not warrant that the Professional Services will be performed or that the Licensed Software will perform error-free or uninterrupted, that it will correct all Professional Services or Licensed Software errors, or that the Professional Services / Licensed Software will meet the Customer's requirements or expectations. Panaseer is not responsible for any issues related to the performance, operation or security of the Professional Services / Licensed Software that arise from the Customer's content or third-party content or services provided by third parties.

3.6 To the extent that the Customer fails to meet any of the Customer Dependencies, the Customer agrees that Panaseer shall:

- (a) not be liable for a failure or delay in meeting any agreed delivery targets; and
- (b) be entitled to recover any additional costs directly incurred as a result of the Customer's failure to meet the Customer Dependencies.

3.7 To assert a claim for breach of warranty, the Customer must notify Panaseer within 30 days of the breach occurring. Such notice shall be sent by email to legal@panaseer.com and must refer to this

Clause 3.7, specifying the breach and requiring its remedy. Upon receipt of such notice, Panaseer shall, at its sole cost, use commercially reasonable efforts to correct the breach to correct the non-conformity within a reasonable period of time, not to exceed 30 days. If Panaseer is unable to substantially correct the specified breach with such period, Panaseer shall, at the Customer's option either:

- (a) allow the Customer to continue to use the Licensed Software and provide an appropriate adjustment, mutually agreed upon by the Parties, to the applicable Fee; or
- (b) allow the Customer to terminate use of the Licensed Software, and refund any fees paid for Professional Services during the period of breach and any advance fees paid for Professional Services under this Agreement.

Subject to Clause 12.1, this Clause 3.6 sets out the Customer's exclusive remedy and Panaseer's entire liability for any breach of warranty.

3.8 Provided that the warranties in Clause 6.4 are and remain true, Panaseer warrants that:

- (a) it has the right to license Licensed Materials to the Customer in accordance with Clause 4.1 and has obtained the benefit of all necessary licences, consents and permissions that it is aware are necessary to facilitate the relevant Order or Statement of Work; and
- (b) use of the Licensed Materials pursuant to and in accordance with the relevant Order or Statement of Work will not infringe the IPR of any third party in the Territory.

4. Ownership Rights: Use of the Licensed Software and Licensed Materials

4.1 All IPR in the Licensed Software, the Licensed Materials and the Professional Services and any derivative works to any of the foregoing (excluding any part that is comprised of Customer Materials in the form received from the Customer) shall at all times remain vested in Panaseer (or its third party licensors) and the Customer shall acquire no rights in them save as expressly provided in these Subscription Terms and the relevant Order or Statement of Work.

4.2 In consideration of the Customer paying the Licence Fees to Panaseer, Panaseer grants the Customer a non-exclusive, non-transferable and non-sublicensable licence to use:

- (a) the Licensed Software in the Territory during the Licence Period for the Permitted Purpose; and
- (b) the Licensed Materials in the Territory during the Licence Period for the Permitted Purposes.

4.3 The Customer shall not use the Licensed Software and the Licensed Materials, or allow the Licensed Software and the Licensed Materials to be used, other than for the purposes and in the manner expressly permitted in the relevant Order or Statement of Work and these Subscription Terms.

4.4 The Licensed Software and the Licensed Materials may only be used for the sole benefit of the Customer and the Customer shall not sell, transfer, distribute or otherwise make the Licensed Software and the Licensed Materials available to, or use the Licensed Materials on behalf of, any third party. Customer will not analyse, decompile or reverse engineer the whole or any part of the Licensed Software, or allow or cause a third party to do so.

4.5 The Customer acknowledges and agrees that if the Customer (including any employee of the Customer) exceeds the Licence Limit, Panaseer shall be entitled to charge additional licence fees in accordance with Clause 14 of these Subscription Terms.

4.6 Each Party shall use reasonable endeavours to ensure that it does not import any virus or other malicious code into the other's computer systems.

5. Customer Obligations and Restrictions

5.1 The Customer shall:

- (a) provide such assistance and co-operation as may be reasonably requested by Panaseer to enable Panaseer to perform the Professional Services in accordance with the Subscription Contract, including by providing Panaseer's personnel with access to, and use of, the Customer's relevant data, equipment, documentation, information and advice; and
- (b) notify Panaseer immediately upon becoming aware of any use of the Licensed Software or the Licensed Materials which is in breach of the terms of the Subscription Contract.

6. Customer Materials

6.1 All IPR in the Customer Materials (in the form received from the Customer) shall at all times remain vested in the Customer (or its third party licensors) and Panaseer shall acquire no rights in it save as expressly provided in the relevant Order or Statement of Work.

6.2 The Customer grants Panaseer a non-exclusive, non-transferable licence to:

- (a) use and copy the Customer Materials for the performance of the Professional Services and/or to incorporate the same into the Licensed Materials only; and
- (b) use the Customer's name and logo to market the Customer as a customer.

6.3 Where Panaseer requests any feedback from the Customer regarding the Licensed Software, the Customer agrees that Panaseer may freely use, exploit and make available any and all Feedback without obligation to the Customer, and the Customer irrevocably assigns all rights, title, and interest in that Feedback to Panaseer.

6.4 The Customer warrants that:

- (a) it has the right to license the Customer Materials to Panaseer in accordance with Clause 6.1; and
- (b) use of the Customer Materials pursuant to and in accordance with the relevant Order or Statement of Work will not infringe the IPR of any third party.

6.5 Where any Customer Materials are to be published, distributed or displayed by Panaseer in the course of the Professional Services and/or in the Licensed Materials the Customer warrants that such Customer Materials will not:

- (a) result in any breach of Applicable Law in any way;
- (b) contain any material which is pornographic, obscene, offensive, racist, abusive, harassing, bigoted, violent, criminal, discriminatory, libellous, defamatory, unlawful or illegal; and

- (c) infringe the IPR of any third party,

and the Customer acknowledges that Panaseer is not responsible for determining whether or not any Customer Materials might result in a breach of this Clause 6.5 but may refuse to publish, distribute or display any Customer Materials where it reasonably suspects that such a breach might otherwise occur.

7. Confidentiality

7.1 Subject to Clause 7.2, each Party shall in respect of the other's Confidential Information:

- (a) keep it in strictest confidence and not make it available to any third party except as expressly authorised herein using the same standard of care that it uses with its own Confidential Information of a similar nature but with no less than reasonable care;
- (b) only use it for the purposes of the Order or the Statement of Work and ensure that only those of its employees, contractors, advisors or agents who need to know have access to it; and
- (c) ensure that any such employees and representatives are aware of and agree in writing to its confidential nature before they are allowed access to it.

7.2 Clause 7.1 does not apply to Confidential Information to the extent that:

- (a) it is in the public domain otherwise than by breach of the Order or Statement of Work;
- (b) it was lawfully in the receiving party's possession or known to it by being in its use or being recorded in its files or computers or other recording media before receipt from the disclosing party, or has been lawfully developed by or for the receiving party independently of any Confidential Information disclosed to it by the disclosing party;
- (c) it is disclosed to the receiving party by a third party on a non-confidential basis and is not, subject to any restriction as to its use or disclosure imposed by or on that third party at the time of disclosure;
- (d) the receiving party is obliged to disclose it by Applicable Law, by any court of competent jurisdiction or any regulatory body, provided that (to the extent permitted by Applicable Law) it gives the disclosing party reasonable notice of such disclosure and the reasons for it;
- (e) supply of the Professional Services requires Panaseer to disclose the Confidential Information to its subcontractors or infrastructure providers who are subject to similar obligations of confidentiality; or
- (f) disclosure of the Confidential Information is permitted under the terms of the Order or Statement of Work or has been authorised in writing by the disclosing party.

8. Software Usage and Security Data

8.1 Panaseer may collect and use Software Usage Data for the following purposes:

- (a) product improvement (in particular, product features and functionality, workflows and user interfaces) and development of new Panaseer products and services (including machine learning technologies);

- (b) improving resource allocation and support;
- (c) internal demand planning;
- (d) improving product performance; and
- (e) any other legitimate interest purpose which Panaseer may reasonably deem necessary.

8.2 Panaseer may collect and use Anonymised Security Data for the following purposes:

- (a) product improvement (in particular, product features and functionality, workflows and user interfaces) and development of new Panaseer products and services (including training artificial intelligence technologies in accordance with clause 9);
- (b) identification of anonymised industry trends and developments, creation of indices and anonymous benchmarking;
- (c) any other legitimate interest purpose which Panaseer may reasonably deem necessary.

8.3 Anonymised industry trends, indices and anonymous benchmarks created from aggregated Anonymised Security Data, as set out in 8.2(b), shall not be shared with third parties in a manner attributable to the Customer or any individual.

8.4 Panaseer may collect and use Security Data for the following purposes:

- (a) product improvement (in particular, product features and functionality, workflows and user interfaces) and development of new Panaseer products and services (including training artificial intelligence technologies in accordance with clause 9);
- (b) any other legitimate interest purpose which Panaseer may reasonably deem necessary.

9. Artificial Intelligence

9.1 Use of AI Functionality.

The Licensed Software may include predictive and generative artificial intelligence ("AI") features designed to assist users in data analysis, investigation, reporting, and other functions described in the Specification. All AI-generated content will be clearly identified within the Licensed Software.

9.2 Customer Control.

Customers may disable or opt out of AI Functionality on a feature-by-feature basis within the Licensed Software where technically supported. Disabling AI Functionality may affect performance or reduce available insights.

9.3 Data Handling and Model Training.

- (a) Panaseer does not use Customer Materials, Security Data, or personal data to train AI models that are used outside the Customer's own environment or that are made available to other customers.
- (b) AI functionalities do not use Customer Materials, Security Data, or personal data, for cross-customer model training.
- (c) Panaseer may use Anonymized Security Data and Software Usage Data for internal product improvement and model optimisation in accordance with Clause 8.

9.4 Third-Party AI Systems.

AI functionalities operate within Panaseer's existing data processing framework and do not introduce new sub-processors unless notified under the Data Processing Agreement. Any external AI technology used by Panaseer is subject to equivalent contractual, security, and privacy safeguards.

9.5 Regulatory Compliance and Risk Classification.

Panaseer assesses each AI functionality against applicable laws and regulatory frameworks, including the EU Artificial Intelligence Act and equivalent U.S. guidance, and confirms that no functionality is classified as "high risk" or prohibited. Panaseer shall maintain appropriate technical, security, and governance controls consistent with its published AI Principles.

9.6 Transparency and Explainability.

Panaseer shall provide clear documentation and labelling for AI functionalities, including the purpose, expected outputs, and limitations of each AI feature, and will make available details of its responsible AI governance framework through the Trust Center.

9.7 Customer Responsibilities.

The Customer remains responsible for reviewing and validating any AI Output and for determining how to act upon it. Panaseer does not warrant that AI Output is accurate, complete or free from error or bias.

9.8 No Reliance or Warranty.

AI Functionality and all AI Output are provided "as is" for analytical support only. Panaseer disclaims all liability for any decisions or outcomes based on AI Output, except to the extent caused by a breach of this Agreement or Applicable Law.

10. Personal Data

- 10.1 **Compliance with Data Protection Legislation:** Each Party shall comply with its obligations under the Data Protection Legislation in relation to any personal data processed in connection with any Order or Statement of Work. In this respect, both Parties will take appropriate technical and organisational security measures, considering both the state-of-the-art technologies and the costs of implementation, against unauthorised or unlawful processing or further processing of personal data, and against accidental loss or destruction of, and damage to each Parties' personal data.
- 10.2 **Additional definitions:** Where used in this Clause 10, the expressions **process**, **personal data**, **controller**, **processor** and **data subject** will have their respective meanings given in Data Protection Legislation.
- 10.3 **Types of personal data processed:** Customer may share personal data with Panaseer strictly for the purpose of enabling Panaseer to provide the Software and Professional Services (if applicable), such as names, addresses and business email addresses.
- 10.4 **Data Processing Agreement:** The parties acknowledge and agree that the provision and use of the Software and the provision of Professional Services, including, without limitation, any information transmitted to, or stored by Panaseer, is governed by the Data Processing Agreement found at <https://panaseer.com/resources/trust-center#global-dpa> (the "DPA"), incorporated as part of the Agreement.

11. Compliance with Laws

Panaseer and the Customer shall at all times comply with all Applicable Laws in respect of the subject matter of these Subscription Terms and any Order or Statement of Work.

Each Party shall comply with all Applicable Laws relating to the development, deployment, and use of artificial intelligence systems, including (where applicable) the EU Artificial Intelligence Act and equivalent national legislation.

12. Liability

- 12.1 Notwithstanding any other term of the Subscription Contract, neither Party limits or excludes its liability for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury arising from its negligence; or
 - (c) any other liability which may not be limited or excluded under Applicable Law.
- 12.2 Without prejudice to Clause 3.1, Panaseer gives no warranties and makes no representations as to the accuracy, completeness or availability of the Licensed Software, the Licensed Materials or the Professional Services and does not warrant or represent that the Licensed Software, the Licensed Materials or the Professional Services will be entirely error free.
- 12.3 Panaseer gives no warranties and makes no representations as to the suitability of the Licensed Software, the Licensed Materials or the Professional Services for any particular purpose (including the Customer's own compliance with Applicable Law). The Customer is responsible for satisfying itself that the Licensed Software, the Licensed Materials and the Professional Services are suitable for any use to which it wishes to put them.
- 12.4 Panaseer may be asked or required to provide advice or assistance to the Customer which does not form part of the Professional Services. Panaseer does not hold itself out as an expert provider of such advice or assistance and shall have no liability if the Customer chooses to rely on it. Panaseer shall only be required to provide advice or assistance to the Customer pursuant to the terms of a Statement of Work, which has been signed by authorised representatives of both Parties, and Panaseer shall have no liability to the Customer for any advice or assistance provided beyond the scope of a Statement of Work.
- 12.5 Neither Party shall be liable for any special, indirect or consequential loss arising out of or in connection with the Subscription Contract or its subject matter, even if it had notice of the possibility of such loss.
- 12.6 Subject to Clause 12.1, Panaseer shall not be liable for:
- (a) any loss of business, loss of profits, loss of anticipated savings, loss of reputation, loss of goodwill, business interruption, increase in bad debt or any loss incurred by any third party arising out of or in connection with the Subscription Contract or its subject matter even if it had notice of the possibility of such loss; or
 - (b) any defects in the Licensed Software, the Licensed Materials or the Professional Services which are attributable to defects in any Customer Materials.
- 12.7 Subject to Clauses 12.1 and 12.8, each Party's entire aggregate liability to the other Party for any Claim arising out of or in connection with:
- (a) an Order shall not exceed an amount equal to 100% of the annualised Fees paid and payable by the Customer to Panaseer under such Order; and
 - (b) a Statement of Work shall not exceed an amount equal to 100% of the Fees paid and payable by the Customer to Panaseer under such Statement of Work.
- 12.8 Clause 12.7 shall not limit either Party's liability in respect of any Claim arising out of or in connection with Clause 7 (Confidentiality), Clause 9 (Personal Data) and Clause 13 (IPR

Indemnity). Subject to Clauses 12.1, 12.5 and 12.6, Panaseer's maximum aggregate liability for all Claims arising out of or in connection with Clause 7 (Confidentiality), Clause 9 (Personal Data) and Clause 13 (IPR Indemnity) collectively shall not exceed:

- (a) in respect of an Order, an amount equal to 200% of the annualised Fees paid and payable by the Customer to Panaseer under such Order; and
- (b) in respect of a Statement of Work, an amount equal to 200% of the Fees paid and payable by the Customer to Panaseer under such Statement of Work.

12.9 Any amounts recovered by the Customer under or in connection with:

- (a) Clause 12.8 shall reduce (and shall not be in addition to) the liability cap in Clause 12.7; and
- (b) Clause 12.7 will not erode the separate liability cap in Clause 12.8.

12.10 Nothing in this Agreement shall entitle either Party to recover more than once for the same loss. If a Claim or series of Claims were to give rise to liability under the cap in Clause 12.7 and the cap in Clause 12.8, the Customer must elect which of the caps it is bringing the Claim or series of Claims under.

12.11 Subject to Clause 12.1, and except as expressly provided in the Subscription Contract, all conditions and warranties or terms of equivalent effect whether express or implied (by statute or otherwise) are excluded to the fullest extent permitted by Applicable Law.

13. IPR Indemnity

13.1 Subject to Clauses 13.3 to 13.5, Panaseer shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including reasonable professional costs and expenses) finally awarded by a court of competent jurisdiction or agreed in final settlement as a result of or in connection with any third party claim brought against the Customer for actual or alleged infringement of a third party's IPR arising out of, or in connection with, Panaseer's breach of the warranty under Clause 3.4 of the Subscription Terms.

13.2 Subject to Clause 13.3, the Customer shall indemnify Panaseer against all liabilities, costs, expenses, damages and losses (including reasonable professional costs and expenses) suffered or incurred by Panaseer as a result of or in connection with any claim brought against Panaseer for actual or alleged infringement of a third party's IPR arising out of, or in connection with, Panaseer's use of the Customer Materials in the provision of the Professional Services to the Customer.

13.3 The indemnities in Clauses 13.1 and 13.2 are conditional upon the indemnified Party:

- (a) notifying the indemnifying Party in writing within 12 months of becoming aware of any claim in respect of which it intends to seek indemnification from Panaseer ("**Indemnified Claim**");
- (b) not making any admission of liability, agreement or compromise in relation to the Indemnified Claim without the prior written consent of the indemnifying Party;
- (c) allowing the indemnifying Party sole conduct of the defence of the Indemnified Claim and all related settlement negotiations;

- (d) providing the indemnifying Party with such assistance and information as the indemnifying Party may reasonably require to assist the indemnifying Party to defend or settle the Indemnified Claim; and
 - (e) using reasonable endeavours to mitigate the amount of the Indemnified Claim.
- 13.4 In the event of an Indemnified Claim, Panaseer reserves the right to:
- (a) procure for the Customer the right to use the infringing Licensed Software free from any such infringement; or
 - (b) replace the infringing Licensed Software with non-infringing substitute materials which comply in all materials respects with the applicable terms of this Subscription Contract.
- 13.5 If the steps set out in Clause 13.4 are, in Panaseer's opinion, not reasonably commercially achievable within a reasonable period of time, Panaseer may terminate this Subscription Contract (in whole or in part) whereupon it shall refund in full any Fees paid by the Customer in respect of any period after the date of termination in respect of the whole or part of the Subscription Contract which is terminated by Panaseer.

14. Payment and Fees

- 14.1 The Customer shall pay the Fees to Panaseer, annually up front on 30 day payment terms, unless stated otherwise in the relevant Order. The Customer shall also reimburse Panaseer for those reasonable expenses incurred during performance of the Professional Services by Panaseer's employees and consultants, provided such expenses shall be agreed in writing in advance by the Customer.
- 14.2 If the Customer wishes to license additional channels or modules in respect of the Licensed Software, Panaseer shall be entitled to charge the Customer an additional licence fee in respect of additional channels or modules in accordance with Panaseer's then prevailing rates, subject to the Parties entering into a Variation of the relevant Order or Statement of Work in accordance with Clause 20.4(a) in respect of such additional channels or modules and the corresponding additional licence fee.
- 14.3 Panaseer may increase the Fees:
- (a) on each anniversary of the Order Effective Date in a proportion not exceeding the proportionate increase in the Retail Prices (all items) Index over the corresponding period or the last increase (if any) in the Fees, whichever is the later; and
 - (b) at the start of each Renewal Period in a proportion not exceeding 5% above the proportionate increase in the Retail Prices (all items) Index over the corresponding period or the last increase (if any) in the Fees, whichever is the later.
- If the Retail Prices (all items) Index ceases to be published then Panaseer may select a comparable replacement index.
- 14.4 If the Customer exceeds the Licence Limits set out in the Order, Panaseer shall be entitled to:
- (a) invoice for such overage on a pro-rata basis from day 31 after the date that the Licence Limits were exceeded until the end of the current contract year for any over-use up to 20% more than the License Limits; and

- (b) re-assess the Fees for the remainder of the Licence Period based on such over-usage. For the avoidance of doubt, if Panaseer increases the Fees in accordance with this Clause 14.4(b), such increase will form the new minimum annual Fee amount and Panaseer shall not be obliged to reduce the Fees below this increased amount at any time during the Licence Period (irrespective of the Customer's usage throughout the remainder of the Licence Period); and
 - (c) oblige Customer to enter into good faith discussions relating to the Fees if the License Limits are exceeded by more than 20% at any time, and may limit usage up to the License Limits in the event such discussions are not concluded within a reasonable time frame.
- 14.5 Any applicable value added, sales, withholding or other tax, tariff, custom, excise or governmental charges ("**Applicable Tax**") is to be paid by the Customer at the prevailing rate on all sums due under the relevant Order or Statement of Work. All sums quoted in the relevant Order or Statement of Work are exclusive of any Applicable Taxes. If any withholding is required by law, the Customer shall gross-up the payment so Panaseer receives the full amount it would otherwise have received.
- 14.6 All sums due must be paid:
 - (a) within 30 days of the date of Panaseer's invoice (or such other period as may be specified in the relevant Order or Statement of Work) (the "**Due Date**"); and
 - (b) in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of Applicable Tax which is required by law).
- 14.7 Without prejudice to any other right or remedy that Panaseer may have, where the Customer fails to pay Panaseer any sum due under this agreement on the Due Date, the Customer shall pay interest on the overdue sum from the Due Date until payment of the overdue sum, whether before or after judgment. Interest under this Clause will accrue each day at 4% a year above HSBC's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 14.8 Without prejudice to any other right or remedy that Panaseer may have, where the Customer fails to pay any amount due under the Subscription Contract on the Due Date and such amount remains unpaid for:
 - (a) 5 days or more following the Due Date, Panaseer may suspend the Professional Services or access to part or all of the Licensed Software until payment has been made in full; and
 - (b) 20 days or more following the Due Date, Panaseer may terminate the Subscription Contract with immediate effect by giving written notice to the Customer.
- 14.9 If, as a result of the Customer's breach of the Subscription Contract, Panaseer is unable to invoice the Customer for any Fees on the date upon which Panaseer would have been permitted to invoice the Customer but for such breach, Panaseer shall be entitled to invoice the Customer for those Fees on the date it would have been entitled to invoice the Customer had the Customer complied with the Subscription Contract.

15. Term

- 15.1 These Subscription Terms shall commence on the first Order Effective Date and shall continue for the Subscription Contract Period unless terminated by either Party in accordance with Clauses 14.8, 16 or 20.2(c) of the Subscription Terms.

- 15.2 Each Order shall commence on the Order Effective Date and shall continue for the Licence Period, unless terminated earlier by either Party in accordance with the terms of the relevant Order, or Clauses 14.8, 16 or 20.2(c) of the Subscription Terms.
- 15.3 Following the Initial Licence Period, each Order shall automatically renew for successive 1 year renewal terms unless either Party provides written notice to the other Party of its intent not to renew at least 3 months prior to the end of the then-current Initial Licence Period or Renewal Period.
- 15.4 Each Statement of Work shall commence on its Statement of Work Effective Date and shall continue for the Statement of Work Term, unless terminated earlier by either Party in accordance with the terms of the relevant Statement of Work, or Clauses 14.8, 16 or 20.2(c) of the Subscription Terms.

16. Termination, Expiry and Suspension

- 16.1 Either Party may terminate an Order or a Statement of Work (including all licences granted under it) immediately on written notice if the other commits any material breach of these Subscription Terms or that Order or that Statement of Work and such breach is incapable of remedy or is not remedied to the non-defaulting Party's reasonable satisfaction within 30 days of written notice sent to legal@panaseer.com specifying the breach and requiring its remedy. For the avoidance of doubt, a breach by a Party of these Subscription Terms shall not entitle a Party to terminate an Order or Statement of Work, and vice versa, and a breach by a Party of an Order or Statement of Work shall not entitle a Party to terminate any other Order or Statement of Work, unless expressly permitted in these Subscription Terms.

- 16.2 Either Party may terminate any Order or Statement of Work immediately on written notice if:

- (a) in respect of the other a resolution is passed or an order is made for winding up (save for the purpose of a bona fide reconstruction or amalgamation);
- (b) in respect of the other an administration order is made, or a receiver or administrative receiver is appointed over any of its property or assets; or
- (c) the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act, or (being a partnership), has any partner to whom any of the foregoing apply,

provided that, in the case of Panaseer, it is permitted to do so under Applicable Law (e.g., s233B Insolvency Act 1986 as amended). Either Party may immediately on written notice to the other Party, terminate these Subscription Terms following the termination or expiry of all Orders and Statements of Work agreed between the Parties.

- 16.3 Where any part of the Fees is payable in advance of the Licensed Software and/or the Professional Services to which they relate, Panaseer may suspend the delivery of the Licensed Software and/or the performance of those Professional Services until payment has been received.

17. Consequences of Termination or Expiry

- 17.1 Subject to Clause 17.4 and Clause 18, upon termination or expiry of an Order or Statement of Work, all licences granted under that Order or Statement of Work shall terminate automatically.

- 17.2 Subject to Clause 17.4 and Clause 17, on termination or expiry of an Order or Statement of Work or any licences under it the Customer shall, at the Customer's cost:
- (a) promptly destroy, delete, or return to Panaseer the relevant Licensed Software (where possible, it being acknowledged that this may not apply in a software as a service context) and Licensed Materials (and all copies thereof) which remain in the possession or control of the Customer in respect of that Order or Statement of Work; and
 - (b) if requested, provide Panaseer with written confirmation, signed by a duly authorised person, that this Clause 17.2 has been complied with.
- 17.3 Subject to Clause 17.4 and Clause 17, on termination or expiry of an Order or Statement of Work Panaseer shall:
- (a) promptly upon request destroy or delete any Customer Materials (and all copies thereof) which remain in the possession or control of Panaseer in respect of that Order or Statement of Work; and
 - (b) if requested, provide the Customer with written confirmation, signed by a duly authorised person, that Clause 17.3(a) has been complied with.
- 17.4 Each Party acknowledges that the other may have a standard data archiving policy which includes the creation and retention of backup copies of data and other information ("**Retained Data**") held on archive computer systems for legal, regulatory, compliance, IT restoration and disaster recovery purposes ("**Retention Purposes**"). Clauses 17.2 and 17.3 shall not apply to Retained Data held on such archive computer systems but such Retained Data may only be used for the Retention Purposes and provided each Party (as applicable) complies with Clause 7 and Applicable Laws in respect of the Retained Data.
- 17.5 Termination or expiry of the Subscription Contract (in whole or in part) does not affect any accrued rights or remedies of either Party.
- 17.6 Any terms of the Subscription Contract which are expressly or impliedly intended to have effect at or after termination will continue to apply notwithstanding termination or expiry.
- 18. Decommissioning and Exit Services**
- 18.1 Promptly following the Customer's written notification to Panaseer that the Customer desires an Order to expire at the end of the Initial Licence Period, or at the end of any Renewal Period, the Parties shall promptly, and acting reasonably, seek to agree the scope and duration of the Decommissioning and Exit Services, together with an exit plan setting out the roles, responsibilities, and activities of each Party in connection with the Decommissioning and Exit Services. Each Party shall perform its allocated activities under the agreed exit plan.
- 18.2 In addition to payment of Licence Fees and any other applicable Fees, Panaseer shall charge the Customer on a time and materials basis for the Decommissioning and Exit Services at the prevailing rates set out in the Rate Card.
- 18.3 If the relevant Order was terminated by Panaseer under Clause 14.8(b) or Clause 15.1, then it shall not be required to commence the provision of Decommissioning and Exit Services until:
- (a) all outstanding sums have been paid; and
 - (b) it has received monies on account in full for the anticipated Decommissioning and Exit Services and Licence Fees.

18.4 An Order may only expire or be terminated once the Decommissioning and Exit Services have been fully completed. Where the Decommissioning and Exit Services have not been fully completed by the end of:

- (a) the Initial Licence Period, then, unless the reason for such non-completion is wholly or mainly due to a Panaseer delay or default, a Renewal Period will commence; or
- (b) a Renewal Period, then, unless the reason for such non-completion is wholly or mainly due to a Panaseer delay or default, a further Renewal Period will commence.

19. Insurance

Panaseer shall have in place commercial insurance appropriate and commensurate with the risks generated by its operations from the Effective Date and shall maintain such appropriate insurance until the Subscription Terms are terminated by either Party pursuant to Clause 16 of these Subscription Terms.

20. Miscellaneous

20.1 Assignment And Subcontracting

- (a) Panaseer may assign any or all of its rights under these Subscription Terms and/or any Order or Statement of Work without the prior written consent of the Customer.
- (b) The Customer shall not assign, transfer, charge or deal in any other manner with any or all of its rights or obligations under these Subscription Terms and/or any Order or Statement of Work without the prior written consent of Panaseer (such consent not to be unreasonably withheld or delayed).
- (c) Subject to the Data Processing Agreement, Panaseer is entitled to subcontract the performance of any of its obligations under these Subscription Terms and/or any Order or Statement of Work but shall remain liable for its obligations under these Subscription Terms and/or any Order or Statement of Work to the same extent as if it had carried out the obligations itself.

20.2 Force Majeure

- (a) Neither Party shall be liable to the other for any delay or non-performance of its obligations under these Subscription Terms and/or any Order or Statement of Work (except for its obligation to make payment) arising from any Force Majeure Event.
- (b) The Party affected by the Force Majeure Event shall use reasonable endeavours to mitigate the effect of the Force Majeure Event and to recommence performance of its obligations under these Subscription Terms and/or the relevant Order or Statement of Work as soon as is reasonably practicable.
- (c) If the affected Party is unable to perform its obligations under the relevant Order or Statement of Work by reason of the Force Majeure Event for more than four weeks, the unaffected Party may terminate the relevant Order or Statement of Work immediately by serving notice on the other and neither Party shall be liable to the other by reason of such termination.

20.3 Counterparts and Electronic Signature

- (a) Each Order or Statement of Work may be executed in any number of counterparts, and all counterparts when taken together will constitute one and the same agreement, and either Party may enter into an Order or Statement of Work by executing a counterpart.
- (b) Each Order or Statement of Work (and, where applicable, each counterpart) may be executed by electronic signature by any of the Parties to any other Party and the receiving Party may rely on the receipt of such document so executed by electronic means as if the original had been received.

20.4 Variation and Waiver

- (a) Any amendment, modification, variation or supplement to these Subscription Terms and/or any Order or Statement of Work ("**Variation**") shall only be binding on the Parties if it is:
 - (i) effected by way of a new Order duly executed pursuant to Clause 2.4; or
 - (ii) otherwise made in writing and signed by an authorised signatory of each Party.
- (b) References to the execution of these Subscription Terms and/or any Order or Statement of Work in Clauses 20.3(a) and 20.3(b) shall also apply to the execution of any Variation to it.
- (c) Failure or delay by either Party to exercise or enforce any available rights or remedies under these Subscription Terms and/or any Order or Statement of Work or at law, or any single or partial exercise of any such rights or remedies, is not a waiver or exhaustion of those rights or remedies and shall not prevent or restrict their further exercise.

20.5 Third Party Rights

- (a) The Parties do not intend to confer any rights on any third parties by virtue of these Subscription Terms and/or any Order or Statement of Work and any person which is not a Party to these Subscription Terms and/or any Order or Statement of Work shall have no right to enforce any of its terms.

20.6 Severance

- (a) If any provision or part provision of these Subscription Terms and/or any Order or Statement of Work is illegal or unenforceable such provision or part provisions shall be modified to the minimum extent necessary to give effect to the commercial intention of the Parties in order to make such provision or part provision valid, lawful or enforceable (as applicable), but without affecting the validity or enforceability of the remaining provisions or part provisions.

20.7 No Partnership, No Agency

- (a) Nothing in these Subscription Terms and/or any Order or Statement of Work constitutes a partnership between the Parties. Neither Party is deemed to be the agent of the other for any purpose, and neither has the power or authority to bind the other or to contract in the name of the other, except as expressly set out in these Subscription Terms and/or any Order or Statement of Work.

20.8 Entire Agreement

- (a) These Subscription Terms and/or any Order or Statement of Work sets out the entire agreement between the Parties in relation to its subject matter and supersedes all previous written or oral agreements, representations, undertakings, warranties or arrangements between the Parties in relation to that subject matter.
- (b) Each Party acknowledges and agrees that in entering into these Subscription Terms and/or any Order or Statement of Work it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in these Subscription Terms and/or any Order or Statement of Work.
- (c) Nothing in Clauses 20.8(a) or 20.8(b) shall exclude or limit any liability arising as a result of any fraud or fraudulent misrepresentation.

20.9 Notices

- (a) All notices, requests, consents and authorisations made pursuant to these Subscription Terms and/or any Order or Statement of Work must be by post/hand or email. Those by post/hand must be sent to the recipient's registered office, chief trading address, or any other premises specified in the Order or Statement of Work for this purpose or otherwise notified to the other Party. Notices shall be delivered by hand or sent by pre-paid first class post or other next working day delivery service. Correctly addressed notices delivered by hand are deemed to have been received at the time the notice is left at the proper address. Correctly addressed notices sent by pre-paid first class post or other next working day delivery service are deemed to have been received on the recipient's second business day after posting. Where notices are delivered to Panaseer by post or hand, an email should be sent concurrently to legal@panaseer.com informing Panaseer that the notice has been sent. Those notices solely by email to Panaseer must be sent to legal@panaseer.com with "Formal Contract Notice" in the header and those by email to Customer must be sent to the email address as set out in the Order or Statement of Work.

20.10 Disputes

- (a) In the event of any dispute arising out of in connection with these Subscription Terms and/or any Order or Statement of Work between the Parties ("**Dispute**"), the Parties shall endeavour to resolve the Dispute in accordance with this Clause 20.10(a), as follows:
 - (i) the Party raising the Dispute shall notify the other Party in writing setting out the nature and substance of the Dispute ("**Dispute Notice**");
 - (ii) the Customer Representative and Panaseer Representative (being those representatives named in the relevant Order or Statement of Work, shall meet to discuss the Dispute Notice within 10 Business Days of the other Party receiving Dispute Notice;
 - (iii) the Customer Representative and Panaseer Representative shall attempt to work together to resolve the Dispute and if no resolution is found and/or agreed between the Parties within 5 Business Days, then the Customer Representative and Panaseer Representative shall escalate the Dispute for resolution to their respective senior managers; and
 - (iv) if the Dispute remains unresolved for a further 10 Business Days following escalation of the Dispute to the Customer Representative's and Panaseer Representative's respective senior managers, then the Parties shall refer the Dispute for mediation under the Centre for Effective Dispute Resolution ("**CEDR**") rules then in force.

- (b) Nothing in Clause 20.10(a) shall prevent a Party from taking action or making a claim against the other Party pursuant to Clause 20.11(b).

20.11 Governing Law and Jurisdiction

- (a) The formation, existence, construction, performance, validity and all other aspects of these Subscription Terms and/or any Order or Statement of Work, any term of these Subscription Terms and/or any Order or Statement of Work and any non-contractual obligation undertaken or incurred in connection with these Subscription Terms and/or any Order or Statement of Work (including those arising out of pre-contractual dealings) will be governed by the laws of England.
- (b) The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in any way relate to these Subscription Terms and/or any Order or Statement of Work or its formation, existence, construction, performance or validity or of any non-contractual obligation undertaken or incurred in connection with these Subscription Terms and/or any Order or Statement of Work (including those arising out of pre-contractual dealings).
- (c) The rights and remedies provided in these Subscription Terms and/or any Order or Statement of Work are cumulative and (except as otherwise stated) are not exclusive of any rights or remedies provided by Applicable Law.