

## GENERAL SUBSCRIPTION TERMS AND CONDITIONS

*Version 1.1, September 2023*

Specifying the terms and conditions for Customer's use of the Software and Planday's delivery of Services etc.

### DEFINITIONS AND INTERPRETATION

In these terms and conditions, the following expressions have the following meanings:

**1**

1.1

"Confidential Information"	means all information that relates to a Party (or any of its businesses) (whether written, verbal or in any other form) and which is accessed or disclosed to the other Party in connection with the Contract, but excluding information that (a) is at the relevant time in the public domain (other than by virtue of a breach); (b) was received by the other Party from a third party who did not acquire it in confidence; or (c) is developed by the other Party without any breach of the Contract.
"Contract"	means the contract which comprises General Subscription Terms and Conditions and the Data Processing Agreement, including any schedules, appendices and amendments hereto.
"Customer"	means the party specified in the Contract requesting the supply of Software and Services from Planday.
"Customer Data"	means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are supplied to Planday by the Customer and/or any End User in connection with the use of the Software and/or the provision of Services.
"Data Processing Agreement"	means the data processing agreement entered into between Planday and Customer concerning Planday's processing of personal data on behalf of Customer forming part of the Contract, including schedules and/or appendices hereto.

“Documentation”	means the documentation accessible online as part of the Software as amended and updated from time to time by Planday.
“End User”	means any natural persons being either (i) employees of Customer, (ii) third-party consultants working for Customer at Customer’s site, or (iii) users working at Customer's clients, which have been individually created as users in the Software with individual user ID (e.g. with name and company reference etc.) and authorized by Planday as users of the Software.
“Event”	means any act, event, omission and/ or circumstance.
“Fees”	means the fees for the Software and Services set out in the Contract as amended from time to time in accordance with the Contract.
"Force Majeure Event"	means circumstances outside of a Party's control, including but not limited to an act of God (including fire, flood, earthquake, hurricane or similar natural disaster), acts of government, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, civil unrest, rebellion, revolution, insurrection, military power or confiscation, terrorist activities, nationalization, government sanction, strikes or other labor conflicts, failures in (1) computer systems, (2) hardware, (3) telecommunications, (4) internet service provider or (5) hosting facilities, power shortages, hacking, denial of service attacks, nationwide blockage or embargo.
"General Subscription Terms and Conditions"	means this document specifying the terms and conditions for the Contract regarding e.g. Customer's use of the Software and Planday's delivery of Services.
"Initial Subscription Term"	means the period commencing on the Subscription Effective Date and lasting through the term specified in the Contract Terms.
“Intellectual Property Rights” or “IPR”	means any and all patents, trademarks, trade names, copyright, moral rights, rights in design, rights in databases, know how and all or other intellectual property rights whether or not registered or capable of registration and subsisting in any part of the world together with all or any goodwill relating to them.

"Parties"	means Planday and Customer.
"Party"	means Planday or Customer.
"Planday"	means Planday Ltd, registered in London, England under Company Number: 09103508.
"Services"	means the services which Planday agrees in writing to provide to the Customer as set out in the Contract.
"Software"	means the staff rota software named "Planday" and any related software and documentation provided to Customer by Planday as set out in the Contract.
"Subscription Effective Date"	means the date on which the Software or Services are first made available to the Customer or such other date as specified on the Contract, whichever is earliest.
"Subscription Period"	A period specified in the Contract.
"Term"	means the period where the Contract is in effect.
"Territory"	means the country or countries in which the Customer has the right to use the Software and Services (not including other countries regardless of where Customer and its subsidiaries, affiliates etc. are located) and as specified in the Contract.
"Working Day"	means any day other than a Saturday or Sunday or a Public or Bank Holiday in the United Kingdom (UK).

## **2 SCOPE, INTERPRETATION AND PRELIMINARY PROVISIONS**

- 2.1 The purpose of the Contract is to govern the delivery of the Software and Services provided by Planday to Customer. This means e.g. that the Contract set forth the terms and conditions for the license granted to Customer regarding the use of the Software as well as the delivery of Services.
- 2.2 These General Subscription Terms and Conditions are the only terms and conditions upon which Planday will supply the Software and Services to Customer. Any general terms and conditions or standard agreements provided by Customer and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing are hereby explicitly rejected.
- 2.3 Planday will strive to deliver Services under the Contract in a professional manner consistent with good industry standards.
- 2.4 Expressions such as "including" and similar expressions mean "including, but not limited to".
- 2.5 Words in the singular include the plural and vice versa.
- 2.6 The headings of the Contract are for guidance only and have no separate legal effect on the understanding or interpretation of the provisions of the Contract.

### **3 DESCRIPTION OF SOFTWARE**

- 3.1 Planday has developed the Software. Since the Software's functionality and applicable user-manual(s) are constantly changing, Customer can find description of the Software's current functionality and the currently applicable user-manual at <https://support.planday.com> or any other webpage Planday designates in its place.

### **4 CUSTOMER LICENSE AND USER RIGHTS**

- 4.1 Planday grants Customer a non-exclusive, limited license per End User as set out in the Contract to access and use the Software provided to Customer by Planday as a cloud solution, solely for the use on Customer's hardware within the Territory during the Term of the Contract. The license is non-transferable unless otherwise is expressly stated in the Contract, e.g. because Customer is allowed to let its clients use the Software and Services.
- 4.2 Except as permitted by mandatory applicable law, or as expressly authorized by this Contract, Customer may not in any form or by any means (i) copy, make error corrections, or otherwise modify, decompile, decrypt, reverse engineer, disassemble, adapt or otherwise reduce any portion of the Software, to human-readable form; or (ii) transfer, assign, store, reproduce, sublicense, publish, rent, lease, distribute, sell, print, display, perform or create derivative works from any part of the Software; or (iii) commercialize the Software, information or products obtained from any part of the Software. To the extent that any of the foregoing items include any third party material, Customer must also obtain written permission from the applicable third party owner prior to engaging in any of the activities set forth in this clause.

- 4.3 Customer may not reproduce, distribute, display, sell, publish, broadcast or transfer any information or other material provided by Planday and/or any information or other material provided as a result of the Software (e.g. advisories and security updates) to any third party, including Customer's affiliates or group related entities, nor make such information or material available for any such use.
- 4.4 The Software may only be used by the legal entity that has purchased a license, has been granted a trial licence or has otherwise been granted an explicit right to use the Software, as applicable, and no shared use with any other legal entity (including Customer's affiliates or group related entities) is allowed.
- 4.5 Customer may not remove, conceal, or alter any copyright notices contained in the Software, in any information or other material provided by Planday, and/or any information or other material provided as a result of the Software or Services.
- 4.6 For the avoidance of doubt, Customer and any individual End User may not exceed or circumvent the permitted usage as set forth in the Contract, e.g. by using the Software and/or installing the application to access the Software outside the entity/entities which the Software has been licensed for, or perform any automatic or systematic internal distribution of received advisories and security updates, etc.
- 4.7 Further, Customer is obligated to ensure that it will not allow, suffer or contribute to any subscription/license to be used by more than one (1) End User, except (i) where such subscription/license has been reassigned in its entirety to another individual End User (cf. clause 5.3), in which case the prior End User shall no longer have any right to access or use the Software and Services, or (ii) where Customer explicitly has been granted an extended license covering more than one End User – such extended license to be agreed by the Parties in writing.
- 4.8 Planday will throughout the Term on regular basis maintain the Software, e.g. by installing new versions and releases (updates) to the Software etc.

## **5 SCALABILITY (CHANGE IN NUMBER OF LICENSES)**

- 5.1 The Customer may at any time during the Term increase its total number of licenses by adding additional End User licenses. Such addition will take effect from the date where such additional licenses are activated by the Customer. Such additional licenses are subject to the General Subscription Terms and Conditions unless otherwise agreed between the Parties, and Planday will consequently invoice Customer for the purchase of such additional licenses according to the payment terms set forth in clause 11.
- 5.2 Customer may at any time decrease the total number of licenses. The minimum billable amount is per your chosen subscription plan (Starter has a 5 user minimum, Plus a 20 user minimum; and Pro a 50 user minimum).
- 5.3 However, during the Term, Customer is entitled to reassign its End User licenses to other end users provided the requirements set forth in the "End User" definition are adhered to. An End

User license may only be reassigned in its entirety to another individual End User, in which case the prior End User shall no longer have any right to access or use the Software and Services.

## **6 CUSTOMER'S OBLIGATIONS**

6.1 The Customer shall:

- a. at all times comply with all laws and regulations and any requirements or instructions that may be given by Planday in relation to the Software and Services;
- b. promptly provide Planday (at Customer's cost) with all information, resources and assistance reasonably requested by Planday in relation to the performance of its obligations under the Contract;
- c. ensure at all times that Planday has access to necessary suitably qualified and experienced Customer representative(s) as reasonably required by Planday in its performance of its obligations under the Contract. The Customer will ensure that such Customer representative(s) will have immediate access to any required information and resources;
- d. ensure that (i) it uses the most current version of its web browser or a version which is not more than two years old in connection with the Services; and (ii) that it complies with all other system requirements notified to it by Planday.
- e. be responsible for obtaining appropriate licences and consents for all content and software which is owned by any third party;
- f. provide a written, up-to-date list of the then-current End Users to Planday promptly on request;
- g. permit Planday at any time to audit the Customer's and End Users' use of the Software and/or Services in order to verify that the Customer's obligations are being performed in accordance with the Contract as further specified in clause 13;
- h. ensure that each End User shall keep a secure password for his use of the Services and that each End User shall keep his password confidential; and
- i. only issue passwords which give administrative access to the Software to appropriate End Users.

6.2 Any delay caused by Customer's failure or delay in performing its obligations under the Contract shall be Customer's responsibility and Planday shall be entitled to charge its then-current standard rates for any unutilized/wasted time or increased efforts on its part that result from the

Customer's failure to fully comply with its obligations promptly or at all, together with any additional costs Planday might incur.

## **7 SUPPORT**

- 7.1 Upon request, Planday will within reasonable time provide ordinary customer support in relation to the Software to Customer free of charge within Planday's normal business hours as specified on Planday's website.

## **8 INTELLECTUAL PROPERTY RIGHTS**

- 8.1 As between Planday, the Customer and/or any End User(s), all Intellectual Property Rights, including the right to patents, copyright, trademarks, or know how, in the Software and Services and any documents or any other material provided to Customer in association with the performance of this Contract and/or arising or developed/created under and/or in connection with this Contract (i.e. both background and foreground IPR) are and shall remain the property of Planday and, except as expressly permitted in the Contract, the Customer and/or End User(s) shall have no right in or to the Software or Services. Save for any Intellectual Property Rights in Customer Data, any Intellectual Property Rights which come into existence as a result of the performance by Planday of the Services will be the property of Planday.

- 8.2 Customer may not use any of Planday's trademarks in connection with activities, product(s) or services, without Planday's prior written consent.

- 8.3 Customer shall own the rights to Customer Data.

## **9 INDEMNIFICATION AGAINST THIRD PARTY CLAIMS**

- 9.1 Subject to the limitations in clause 14, Planday shall indemnify Customer from and against any and all damages awarded by any court finding that the Software or Services delivered by Planday to Customer infringes any intellectual property rights of any third party who is not an affiliate or a group related entity of Customer.

- 9.2 Planday's obligations under clause 9.1 are subject to the conditions that (i) Customer provides prompt (but in no event more than 30 days) written notice of such claims, (ii) Customer provides all necessary information and authority requested or required for the defence or settlement of such action or proceeding, and (iii) Planday has sole control over the defence and settlement of such claims. Notwithstanding anything to the contrary, Planday shall not be responsible for any cost or expense incurred or compromise made without Planday's prior written consent.

- 9.3 Planday's obligations under clause 9.1 shall not apply to the extent that such damages are related to or caused by (i) any modification or alteration of the Software or Services by anyone other than Planday, (ii) Customer's use of a non-current copy of the Software, (iii) any specifications, software, hardware or services provided by or on behalf of Customer, (iv) any combination of the

Software and/or Services with any hardware, software, services or portion thereof that is not (a) supplied by or on behalf of Planday, or (b) specified by Planday to be used with the Software, or (v) Customer's use of the Software in a manner not specified in the specifications and documentation or otherwise in violation of this Contract.

- 9.4 If the Software or any portion thereof, becomes, or Planday believes that it is likely to become, the subject of an intellectual property claim, Planday shall, at its option and expense, have the right to (i) procure for Customer the right to continue using the Software or the portion so affected, (ii) modify the Software to avoid the intellectual property claim, (iii) substitute functionality substantially equivalent to the Software at the time of such substitution, or (iv) terminate this Contract and provide to Customer a refund of any prepaid portions of the subscription Fees under this Contract.
- 9.5 Customer acknowledges that it is not entitled to claim damages from Planday if Planday remedies a possible intellectual property infringement as set out in clause 9.4.

## **10 WARRANTY**

- 10.1 Subject to clause 10.3, Planday warrants that the Services will be provided using reasonable skill and care and that the Software will be free from material defects in design or workmanship.
- 10.2 Subject to clause 10.1, the Parties acknowledge and agree that all conditions, warranties and stipulations, express or implied, statutory, customary or otherwise of any kind which, but for such exclusion, would or might subsist in favour of the Customer are expressly excluded – and Planday expressly excludes any and all warranties and conditions – to the maximum extent permitted by applicable law.

Without prejudice to the generality of clause 10.2 Planday does not represent or warrant that:

- 10.3
- a. the functions contained in the Software will meet the Customer's or End User's requirements or that the access to or operation of the Software will be uninterrupted or error free;
  - b. the Software or Services are free of viruses, inaccuracies, errors, bugs, or interruptions, or are reliable, accurate, complete, or otherwise valid.

## **11 PRICES AND PAYMENT TERMS**

- 11.1 The Fees to be paid by Customer to Planday for the use of the Software, Services and other deliverables provided by Planday are set out in the Contract.
- 11.2 Planday is entitled to invoice Customer in advance for the Fees and any payable sums under the Contract on quarterly basis (or such other time as notified to Customer) as further specified in the Contract or as notified by Planday. Planday may issue its first invoice at any time on or following the signing of the Contract. Invoices for all Fees and sums payable under the Contract



are (unless otherwise stated in the Contract) due for payment within 30 days from the date of invoice.

- 11.3 All Fees and sums payable by the Customer under the Contract are expressed exclusive of value added tax, which shall also be paid by the Customer at the prevailing rate subject to the provision by Planday of a valid invoice.
- 11.4 Planday will be entitled to change the Fees at any time by giving written notice to the Customer, provided that such increases shall be limited to no more than one in each calendar year and shall be an amount equal to the greater of:
  - a. 5% of the then current aggregated annual Fees; and
  - b. the increase in the retail price index as amended from time to time during the period from the later of (i) the Subscription Effective Date and (ii) the latest previous price increase.
- 11.5 The changes in Fees, cf. clause 11.4, will take effect from expiry of the relevant notice period as specified in clause 11.4 (or, if later, the date specified in the notice).
- 11.6 If, at any time, whilst using the Software and Services, the Customer exceeds the number of permitted End Users that are licensed to use the Software and/or Services as set out in the Contract according to the terms and conditions set forth in the Contract, Planday may retroactively charge Customer the additional license Fees according to clause 13.3.
- 11.7 Any Fees and/or sums not paid by Customer when due shall bear interest from the due date until paid at a rate of 2% per month. Further, without prejudice to any other rights and remedies available to Planday (including without limitation its right to charge interest), if any sum payable under the Contract is not paid on or before the due date for payment, Planday will be entitled to notify the Customer of such late payment and charge the Customer a fee of approx. EUR 13.5 to cover its administrative costs of such notification.
- 11.8 In the event that the Customer fails to pay any Fees and/or sums due to Planday on or before its due date for payment, Planday may suspend performance of its obligations under the Contract by giving the Customer not less than seven days' notice. In that connection, Planday may e.g.:
  - a. disable the Customer's access to the Software; and
  - b. suspend provision of the Services, until a reasonable time after full payment is received by Planday.
- 11.9 In the event that the Contract expires or is terminated for any reason, the Customer will not be entitled to any refund of any Fees or other remuneration paid to Planday, whether or not they are paid in advance.

## **12 SUSPENSION, MODIFICATION AND OTHER PLANDAY RIGHTS**

- 12.1 Planday reserves the right at any time in its sole discretion (i.e. without any consent from Customer) to substitute, change and/or modify the Software and Services, including their specifications and documentation, without any liability towards Customer whatsoever, including limitation to the scope, functionalities, and content of the Software, or part thereof, e.g. in order to comply with legal requirements and/or ensuring non-infringement of third party Intellectual Property Rights.
- 12.2 Further, Planday is entitled to suspend or discontinue the provision of the Software and Services (in whole or in part) with immediate effect, without any liability towards Customer whatsoever, in the following circumstances:
- a. Non-payment in accordance with clause 11;
  - b. if required by law or by any applicable governmental or regulatory body;
  - c. if the Software or Planday's systems or any part of them is subject to an attack or virus (including, without limitation, unauthorised access);
  - d. if Customer is in breach of the Contract, or if Planday reasonably believes that the Software and/or Services are being used in breach of the Contract; or
  - e. if there is an event in respect of which Planday reasonably believes that the suspension of the Software and/or Services is necessary to protect the Software, Services and/or Planday's systems, the Customer and/or Planday's other customers.
- 12.3 Planday may provide information about the Customer's and End Users' use of the Software and Services and access to Customer Data in response to requests from relevant government or regulatory authorities.

## **13 MONITORING AND AUDIT**

- 13.1 Planday may monitor Customer's (including End Users) usage of the Software and Services in order to verify that Customer's use of the Software and Services is compliant with the terms and conditions of the Contract and to ensure that Customer is sufficiently licensed.
- 13.2 Planday may upon reasonable notice (which shall not be less than two (2) business days), subject to Customer's reasonable security procedures and during reasonable business hours, conduct an audit in order to verify that the terms and conditions specified in the Contract are complied with and that Customer is sufficiently licensed.
- 13.3 If monitoring or an audit reveals that Customer is not sufficiently licensed or has underpaid any Fees, then - without prejudice to Planday's other rights and remedies - the Fees payable by the Customer for such additional licenses and payments shall be calculated in accordance with

Planday's then-current standard price list and the Customer shall pay to Planday an amount equal to the underpayment within 30 days of the date of the relevant audit. Further, in case, monitoring or an audit reveals that Customer is not sufficiently licensed or has underpaid any Fees, Customer shall pay Planday's reasonable costs incurred in respect of such monitoring or audit.

#### **14 LIMITATION OF LIABILITY AND DISCLAIMERS**

- 14.1 The Software is intended to make it convenient and easier to manage staff and business operations. However, the Software is provided "as is" without warranty of any kind, either expressed or implied, including but not limited to, any implied warranties and merchantability or fitness for a particular purpose. For the avoidance of doubt, Planday does not warrant - and this is acknowledged by Customer - that (a) operation of the Software and supply of Services shall be uninterrupted or error free, or (b) that functions contained in the Software will be able to operate in combination with other software and systems used by Customer or meet Customer's requirements.
- 14.2 Customer accepts that any information provided by Planday is general information only and is not to be deemed as advice. Planday will use reasonable business efforts to ensure that any information provided by Planday is accurate. However, Planday does not accept responsibility for any loss suffered as a result of Customer's use of or reliance on the information provided by Planday, other than expressly set out in the Contract.
- 14.3 Planday shall in no event be liable to the Customer (or any other person or entity) for any indirect, incidental, special, punitive, exemplary, or consequential damages (including, but not limited to, procurement of substitute Software or product(s); loss of use, revenues, anticipated profits, anticipated savings, goodwill, business opportunities and/or any damage to and/or loss of data (in each case, whether direct or indirect or suffered by End Users); or business interruption) however caused and on any basis of liability, whether in contract, strict liability, misrepresentation, restitution or tort (including negligence or otherwise) arising in any way out of this Contract, the Software and Services, including Customer's use thereof, even if advised of the possibility of such damage.
- 14.4 The total liability of Planday for claims arising under or related to the Contract, tort, misrepresentation, restitution etc., howsoever arising, shall be limited to an amount equal to 50% of the aggregate annual subscription Fees paid under the Contract by the Customer to Planday during the past twelve (12) months prior to the act or omission giving rise to the claim(s). Until twelve months has elapsed, the limitation of liability shall be calculated as the agreed annual subscription Fees for the first twelve (12) months after the Subscription Effective Date (based on the agreed number of licenses at the time of the Subscription Effective Date) multiplied by 0.5. This limitation of liability is cumulative and not per incident (i.e. the existence of two or more claims will not enlarge this limit)
- 14.5 Notwithstanding anything to the contrary in the Contract, Planday's liability to the Customer:

a. for death or personal injury caused by the negligence of Planday, its employees or sub-contractors; and

b. for fraud or fraudulent misrepresentation,

is not limited, but nothing in this clause 14 confers any right or remedy upon the Customer to which it would not otherwise be entitled.

- 14.6 Without prejudice to clause 10.2, Planday is not responsible for any errors or problems of any nature arising from the use of the Software for purposes for which it was not designed.
- 14.7 Subject to clauses 14.5 and 17.2, Planday will not be liable to the Customer for any damage to, loss of or costs in respect of time spent by Customer's employees or consultants in connection with the Software and Services (in each case, whether direct or indirect or suffered by End Users).
- 14.8 Nothing in clause 14 shall be construed to limit Planday's liability under mandatory law, including e.g. (i) Planday's liability in cases where it is documented that Planday has acted in a grossly negligent or intentional manner, or (ii) provisions of applicable product liability law. Any product liability is, however, disclaimed to the furthest extent possible.
- 14.9 This clause 14 will continue in force after termination of the Contract for whatever reason.

## **15 CONFIDENTIALITY**

- 15.1 The Parties acknowledge and confirm that during the Term of the Contract and forever following its expiry they shall keep Confidential Information of the other Party strictly confidential and secret, i.e. neither Party may use or disclose to any third party (nor permit its use or disclosure) any Confidential Information of the other Party, unless specifically set forth in the Contract or as contemplated for the proper use of the Software.
- 15.2 The obligation of confidentiality set forth in clause 15 shall not apply to (i) information which is or becomes publicly known (through no fault or breach of the receiving Party), and (ii) if either Party is required by law or by any statutory or regulatory authority to which it is subject to disclose any Confidential Information, then it shall be entitled to do so provided that it (a) to the extent allowed, promptly notifies the other Party in writing of the full circumstances of the required disclosure, (b) consults with the other Party as to steps to minimise or avoid the disclosure and takes any such steps reasonably required by that other Party, and (c) to the extent possible, receives confidentiality undertakings in a form approved by the other Party from the entity to whom the Confidential Information is disclosed.
- 15.3 Planday is entitled to disclose information to any regulator, sub-contractor or service provider to it. Such information will be disclosed only to parties having a confidentiality agreement with Planday, under which such information will be kept secret and confidential.

## **16 USE AS REFERENCE IN PLANDAY MARKETING**

- 16.1 By entering into this Contract, Customer agrees and accepts that Planday will have the right to use Customer's name and logos and the fact that the Customer is a customer of Planday as a reference in brochure or advertising material issued by Planday, provided this is used in a loyal manner and according to usual practice.

## **17 CUSTOMER DATA**

- 17.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Planday to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by (i) Planday to the extent that such Customer Data is held by Planday through the provision of Services; and/or (ii) the Customer in all other circumstances. Planday shall not be required to restore more than one previous full iteration of the Software and/or data containing the relevant lost or damaged Customer Data and shall not be required to restore one or more individual lost or damaged files.

- 17.2 Planday shall however not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Planday to perform services related to Customer Data maintenance and back-up).
- 17.3 Planday is entitled to delete or cease processing and separate any Customer Data:
- a. that is or may be infected with a virus or otherwise corrupted; or
  - b. the storage or transmission of which may put Planday in breach of any applicable law.

## **18 DATA PROTECTION**

- 18.1 The Parties acknowledge that Planday may have access to personal data which the Customer has introduced into the Software. Planday's data processing activities are regulated in the separate Data Processing Agreement.

## **19 USE OF SUB-CONTRACTORS**

- 19.1 Planday may at any time engage and use sub-contractors or sub-processors, without Customer's prior consent, to provide the Software and Services according to the Contract. Planday's use of sub-processors are regulated in the Data Processing Agreement.

- 19.2 Planday is responsible for its sub-contractors/sub-processors' compliance with Planday's obligations under the Contract.

## **20 TERM AND TERMINATION FOR CONVENIENCE**

- 20.1 The Contract shall enter into force on the Subscription Effective Date and shall continue to be in force in the Initial Subscription Term and thereafter in successive automatically renewed Subscription Periods until terminated in accordance with the provisions of the Contract, unless another date of expiry is expressly agreed in the Contract, in which case the Contract will expire no later than on the agreed date of expiry, (the "Term").
- 20.2 The Contract may not be terminated by either Party for convenience in the Initial Subscription Term.
- 20.3 At any time during the Subscription Period, either Party may terminate the Contract for convenience with a written notice of at least one (1) month prior to the expiry of the then-current Subscription Period and with effect from the expiry of said Subscription Period.

## **21 TERMINATION FOR BREACH**

- 21.1 The Customer may terminate the Contract with immediate effect if Planday is in material breach of the Contract and (in the case of a breach capable of being remedied) this has not been remedied within 30 days of a written request to remedy the breach.
- 21.2 Planday may terminate the Contract with immediate effect if:
- a. the Customer has failed to pay Fees or any sums due to Planday under the Contract within 30 days from the due date; or
  - b. the Customer is in material breach of the Contract and (in the case of a breach capable of being remedied) this has not been remedied within 30 days of a written request to remedy the breach.
- 21.3 Planday will make the Customer Data electronically available in a standard format to be exported by the Customer for a period of 14 days after expiry or termination of the Contract. If any additional assistance is needed, this will be invoiced according to the time and material used by Planday. Planday may permanently delete any Customer Data that remains in its possession for more than 120 days following expiry or termination of the Contract.
- 21.4 Any termination of the Contract under this clause 21 is without prejudice to any other rights or remedies a Party may be entitled to under the Contract or applicable law. It does not affect any accrued rights or liabilities of neither Party nor any provision which is expressly or by implication intended to come into force on, or continue in force after termination.

- 21.5 Any other provisions which expressly or impliedly continue to have effect after expiry or termination of the Contract shall survive expiry or earlier termination of the Contract.

## 22 FORCE MAJEURE

- 22.1 If either Party is affected by a Force Majeure under the Contract, it shall promptly notify the other Party in writing of the matters constituting the Force Majeure Event and shall keep that Party fully informed of their continuance and of any relevant change of circumstances whilst such Force Majeure Event continues.

- 22.2 The Party affected by a Force Majeure Event shall take all reasonable steps to minimise the effects of the Force Majeure Event.

- 22.3 Either Party shall have the right to terminate the Contract forthwith for convenience with thirty (30) days' prior written notice, if the Force Majeure Event exists for a consecutive period of sixty (60) days.

- 22.4 Neither Party shall be in breach of this Contract, or otherwise liable to the other Party, by reason of any delay in performance, or non-performance of any of its obligations which is caused by a Force Majeure Event.

## 23 MISCELLANEOUS

- 23.1 Notices: Any notices shall, unless otherwise expressly stated, be in writing and shall be given by sending the same by e-mail or registered post to the other Party's address as may be designated in writing from time to time. Any notice sent by registered post shall be deemed to have been delivered five Working Days after its posting if sent domestically and 10 Working Days after its posting if sent internationally. Any notice given by e-mail shall be deemed to have been delivered on the next Working Day following transmission.

- 23.2 Order of precedence: In the event of any conflict or inconsistency between the terms and conditions of this Contract, the following order of precedence apply:

1. Contract
2. Any addenda
3. General Subscription Terms and Conditions
4. Data Processing Agreement
5. Any appendices
6. Other documents

Notwithstanding the above-mentioned order of precedence, the Data Processing Agreement will take precedence in relation to the processing of personal data, however not in relation to the liability section of the General Subscription Terms and Conditions.

This means that the Contract has the highest rank in case of conflict and/or inconsistency between terms and conditions in the Contract and the terms and conditions set forth in the General Subscription Terms and Conditions.

- 23.3 Assignment: The Customer may not assign, novate, transfer or subcontract any rights or obligations under the Contract without Planday's prior written consent. Planday shall have the right to assign, novate, transfer or subcontract all or any of its rights and obligations under the Contract to any third party upon written notice to the Customer including without limitation appointing agents to invoice and receive payment from the Customer under the Contract.
- 23.4 Sale of shares and transfer of assets: Planday is at any time entitled (without consent from Customer) to divest its business (transfer of assets) in whole or in part and to enter into any investment agreements or share sale and purchase agreements etc. with any third parties.
- 23.5 No waiver: Failure by either Party to exercise or enforce any right conferred (which, for the avoidance of doubt, includes without limitation Planday's right to charge any costs and/or expenses at any time) shall not be deemed to be a waiver of any such right nor operate so as to prevent exercise or enforcement thereof or of any other right on any later occasion.
- 23.6 Changes/amendments: The Contract may only be varied or amended in writing and any such variation or amendment must be signed by a duly authorised representative of each of the Parties.
- 23.7 Entire Contract: The Contract constitutes the entire agreement between the Parties and supersedes any prior agreement or arrangement in respect of its subject matter. Neither Party has entered into the Contract in reliance upon, and it will have no rights in respect of, any misrepresentation, representation or statement (whether made by the other Party or any other person and whether made to the first Party or any other person) which is not expressly set out in the Contract. Nothing in this clause 23.7 will be interpreted or construed as limiting or excluding the liability of any Party for fraud, intent or fraudulent misrepresentation.
- 23.8 Severability: In the event that any provision of the Contract is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indications of the same are received by either of the Parties from any relevant competent authority, then (i) such provision shall be severed from the Contract and the remaining provisions shall remain in full force and effect, and (ii) the Parties shall discuss in good faith with a view to substituting any void and/or unenforceable provision with a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the void and/or unenforceable provision.

## 24 GOVERNING LAW AND DISPUTES

### 24.1 Governing law



24.1.1 The validity, interpretation, and performance of this Contract shall be governed by and construed under the laws of the UK excluding its conflict of laws provisions. The United Nations' Convention on the International Sale of Goods shall not apply.

#### 24.2 Negotiations

24.2.1 Should a dispute arise between the Parties as to the interpretation or the legal effects of the Contract, the Parties shall first seek to resolve such dispute through negotiations.

24.2.2 If such negotiations do not succeed within ten (10) Working Days, or a different period agreed by the Parties, each of the Parties may request that the dispute be brought before (i) an independent expert appointed by the Parties, or (ii) submitted for mediation, cf. clause 24.3, or (iii) the UK Courts, cf. clause 24.4.

#### 24.3 Mediation

24.3.1 If a dispute related to this Contract has not been resolved after negotiations, the Parties shall attempt to resolve the dispute through mediation administered through English Law.

#### 24.4 Competent courts

24.4.1 If a dispute is not resolved through negotiations, through mediation or by an independent expert, the dispute may be brought before UK courts, who will have exclusive jurisdiction.

\*\*\*