

TERMS AND CONDITIONS

These terms and conditions (*Agreement*) apply to the quote agreed between us (*Quote*), PASS Software Limited or PASS Recruitment Services Limited (*PASS, or us or we*), and the company detailed in the Quote (*Company or you*), in relation to the supply by PASS of one or more of the following:

- the software product(s) listed in the Quote (*Software*), which includes computer software, the data supplied with it and the associated media, printed materials and documentation as supplied from time to time in connection with it (*Documentation*) and related support and maintenance services listed in the Quote;
- the Software delivered on a SaaS model as set out in the Quote (*SaaS Services*); and/or
- Hardware as set out in the Quote (*Hardware*); and/or
- Professional Services as set out in the Quote (*Services*).

1. TERMS OF LICENCE

1.1 In consideration of the payment of the fee included in the Quote which shall include a fee for enrolment in the service and support programme as set out in clause 4 below (*Fee*), PASS hereby grants to you a non-exclusive, non-transferable right to use the Software and the Documentation in the United Kingdom in accordance with this Agreement. For the avoidance of doubt, the Quote must be formally accepted by PASS in order for it to be binding on PASS.

1.2 You may: download, install (as appropriate) and use the Software for your internal business purposes only; use the Software in connection with a single database and with a single set of data only at any one time, unless the Software allows you to work with multiple sets of data (if you wish to use the Software on more than one database, prior express consent in writing must be obtained from PASS and where required an additional license fee paid); use any Documentation in support of the use permitted under this Agreement and make up to one copy of the Documentation as is reasonably necessary for its lawful use.

1.3 Except as expressly set out in this Agreement, you undertake:

- a) except as may be allowed by any applicable law which is incapable of exclusion by Agreement between the parties: not to attempt to copy (except where such copying is incidental to normal use of the Software or where it is necessary for the purpose of back-up or operational security), modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or attempt to copy, reverse-compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
- b) not to access all or any part of the Software and Documentation in order to build a product or service which competes with the Software and/or the Documentation;
- c) not to use the Software and/or Documentation to provide a bureau service to third parties;
- d) not to license, sell, rent, lease, transfer, assign, distribute, or otherwise make the Software and/or Documentation available to any third party,
- e) not to make alterations to, or modifications of, the whole or any part of the Software nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs, other than for the purpose of creating and maintaining necessary interfaces designed and maintained by us;
- f) to supervise and control use of the Software and ensure that your employees and representatives use the Software in accordance with this Agreement;
- g) to include the copyright notice of PASS on all entire and partial copies you make of the Software on any medium and the Documentation .

1.4 All third party software products supplied to you under the Quote are licenced to you under the terms (including but not limited to the restrictions on use, warranty, and support) of the original licensor's agreement which is supplied with such third party software and you shall comply with such terms and conditions at all times. You must permit PASS and its representatives, at all reasonable times and on reasonable advance notice to inspect and have access to any premises at which the Software is being kept or used, to the computer equipment located there, and to any records kept pursuant to this Agreement, for the purpose of ensuring that you are complying with this Agreement and also to audit such records remotely where technically possible.

1.5 The rights provided under this Agreement are granted to you only, and shall not be considered granted to any of your joint venture companies or partnerships, unless expressly authorised in writing and by a Director of PASS. You may allow a subsidiary company (as defined in section 1159 of the Companies Act 2006) to use the rights granted under this Agreement,

as long as you immediately notify us of such usage, they remain a subsidiary in your group, and provided that such subsidiary complies with the terms of this Agreement and you remain fully liable for all acts and omissions of such subsidiary.

1.6 You acknowledge that all intellectual property rights in the Software and the Documentation throughout the world belong to PASS, that rights in the Software are licensed (not sold) to you, and that you have no rights in, or to, the Software or the Documentation other than the right to use them in accordance with this Agreement.

1.7 The integrity of the Software may be protected by technical protection measures (*TPM*) so that the intellectual property rights, including copyright, in the Software of PASS are not misappropriated. Whether *TPM* is in place or otherwise, you must not attempt in any way to remove or circumvent such *TPM*, nor to apply, manufacture, import, distribute, sell, let for hire, offer, expose or advertise for sale for hire or have in your possession for private or commercial purposes, any means whose sole reasonable purpose is to facilitate the unauthorised removal or circumvention of such *TPM*.

1.8 PASS warrants that during the period of 90 days after the supply of the Software to you (*Warranty Period*), the Software will, when properly used, perform substantially in accordance with the functions described in the user manual and release notes supplied by us (provided that the Software is properly used on the computer and with the operating system for which it was designed as referred to in such materials). If, within the *Warranty Period*, you notify PASS in writing of any defect or fault in the Software in consequence of which it fails to perform substantially in accordance with the Documentation, and such defect or fault does not result from you having amended the Software or used it in contravention of this Agreement, PASS will, at its sole option, repair or replace the Software, provided that you make available all the information that may be necessary to assist PASS in resolving the defect or fault, including sufficient information to enable PASS to recreate the defect or fault.

1.9 PASS shall permit the Company to inspect and have access to any records kept in connection with this Agreement, for the purposes of ensuring that PASS is complying with the terms of this Agreement, provided that the Company provides reasonable advance notice to PASS of such inspections, which shall take place at reasonable times and no more than once per annum.

2. SAAS SERVICES

2.1 PASS shall deliver the SaaS Services to you in accordance with the terms of this Agreement and the applicable SaaS Support Services - service level agreement in place from time to time.

2.2 In relation to the authorised users, the Company undertakes that: the maximum number of authorised users that it authorises to access and use the SaaS Services and the Documentation shall not exceed the number of subscriptions it has purchased from time to time; it will not allow or suffer any subscription to be used by more than one individual authorised user unless it has been reassigned in its entirety to another individual authorised user, in which case the prior authorised user shall no longer have any right to access or use the SaaS Services and/or Documentation; each authorised user shall keep a secure password for their use of the SaaS Services and Documentation, that appropriate password policies (including frequency of change) will be applied and that each authorised user shall keep his password confidential.

2.3 The Company shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the SaaS Services that: is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or causes damage or injury to any person or property; and PASS reserves the right, without liability to the Company, to disable the Company's access to any material that breaches the provisions of this clause.

3. PAYMENT

3.1 You shall pay any invoice submitted by us strictly in accordance with the payment terms stated in the Quote.

3.2 If you fail to make any payment due to us by the due date for payment, then we may charge you interest on the overdue amount at the rate of 8% per annum above HSBC PLC's base lending rate from time to time or the maximum permitted by law. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You shall pay the interest immediately on demand by us, together with associated debt recovery costs.

3.3 We reserve the right to include mechanisms to inhibit, limit or prevent normal operation of the Software and to activate these or to suspend the delivery of Services or SaaS Services until you have made all payments due to us.

4. SUPPORT

4.1 Subject to payment of the applicable fees, we shall provide support services to you in respect of the Software. You agree to be bound by the support terms and conditions attached in schedule 1 to this Agreement.

5. SUPPLY OF SERVICES

5.1 PASS and the Company will agree mutually convenient times for the delivery of the Services. Where such dates are booked in advance, the Company understands that PASS is required to commit its resources. Payment for any advance bookings which are cancelled by the Company without the following notice will not be refunded: a minimum of five (5) business days' notice for Services to be delivered at a Company site and a minimum of two (2) business days' notice for Services which will be delivered remotely.

5.2 PASS undertakes that the Services will be performed with reasonable skill and care.

6. SUPPLY OF HARDWARE

6.1 The quantity and description of the Hardware shall be as set out in the Quote. We shall use reasonable endeavours to transfer to you the benefit of any warranty or guarantee given by the Hardware manufacturer to us. PASS's sole liability for performance of the Hardware is limited to returning the Hardware to the manufacturer for processing under the manufacturer's warranty or guarantee and on the basis that return of the Hardware to us is within fourteen days of the date of delivery to you. All warranties, conditions and other terms implied by statute or common law are excluded from the Agreement to the fullest extent permitted by law.

6.2 The Hardware is supplied to you on the basis that you are wholly responsible for selecting the Hardware because it is suitable for your business and you have carried out all necessary due diligence to ensure that it is suitable for your requirements. The Hardware shall be at your risk following delivery to you. Ownership of the Hardware shall pass to you when we have received in full in cleared funds all sums due to us in respect of the Hardware.

7. PASS'S LIABILITY

7.1 The following provisions set out the entire financial liability of PASS (including without limitation any liability for the acts or omissions of its affiliates, employees, agents and sub-contractors) to you in respect of: (a) any breach of this Agreement howsoever arising; and (b) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including, without limitation, negligence) arising out of or in connection with the Agreement.

7.2 All warranties, conditions and other terms implied by statute or common law are excluded from the Agreement to the fullest extent permitted by law.

7.3 Nothing in this Agreement excludes or limits the liability of PASS for: (a) death or personal injury caused by PASS's negligence; or (b) fraud or fraudulent misrepresentation.

7.4 Subject to clause 7.3:

- a) PASS shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - (i) loss of profits; or (ii) loss of business; or (iii) depletion of goodwill or similar losses; or (iv) loss of anticipated savings; or (v) loss of goods; or (vi) loss of contract; or (vii) loss of use; or (viii) loss or corruption of data or information; or (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses;
- b) PASS's total liability in contract, tort (including, without limitation, negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance of the Software, the SaaS Services, the Services or the Hardware shall be limited to an amount equal to 125% of the fees paid by you for the Software, the SaaS Services, the Services or the Hardware as applicable in the twelve months prior to any such liability arising.

7.5 PASS shall have no liability to you under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control.

7.6 You accept that the Software, the SaaS Services, the Services and the Hardware have been supplied to you on the basis that you have determined their fitness for purpose for your own specific needs.

8. CONFIDENTIAL INFORMATION

8.1 Each party may be given access to information that is proprietary or confidential and is either clearly labelled as such or identified as confidential information (*Confidential Information*) by the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or

(e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

8.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement, for a period of seven years from disclosure of the Confidential Information.

8.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of this Agreement.

8.4 This clause shall survive termination of this Agreement, however arising.

8.5 You agree that we may use your name and logo on a customer reference list that we may provide to potential customers.

9. TERMINATION

9.1 Unless otherwise expressly stipulated in the Quote, this Agreement shall continue in force for a period of not less than twelve months from the date of supply of the Software / SaaS Service to you and will automatically continue until either party has given the other not less than ninety days' written notice of termination. Unless otherwise expressly stipulated in the Quote, you may remove certain Software / SaaS Services supplied under this Agreement after the initial period of twelve months from the date of supply by giving not less than ninety days' written notice of such amendment (in which case this Agreement shall continue in force in respect of the remaining Software/SaaS Services).

9.2 PASS may terminate this Agreement immediately on written notice to you if:

- a) you commit a material or persistent breach of this Agreement (which shall include a payment obligation) which you fail to remedy (if remediable) within 14 days after the service on you of written notice requiring you to do so;
- b) the Company becomes insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), enters into liquidation, whether voluntary or compulsory (other than for reasons of bona fide amalgamation or reconstruction), passes a resolution for its winding-up, has a receiver or administrator manager, trustee, liquidator or similar officer appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt, or becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986).

9.3 Upon termination for any reason:

- (a) all rights granted to you under this Agreement shall cease;
- (b) you must cease all activities authorised by this Agreement;
- (c) you must immediately delete or remove the Software from all computer equipment in your possession and immediately destroy or return to PASS (at PASS's option) all copies of the Software and Documentation then in your possession, custody or control and, in the case of destruction, certify to PASS that you have done so;
- (d) any amounts due from you shall become immediately payable including, in the event that PASS has terminated this Agreement because of a default by you as set out in sub-clauses 9.3(a) and (b) above, the amount payable in respect of the notice period as set out in clause 9.1.above.

10. GENERAL

10.1 INTELLECTUAL PROPERTY RIGHTS

- (a) All Intellectual Property Rights (as defined below) associated with any ideas, concepts, techniques, inventions, processes or works of authorship developed or created by PASS or its personnel or contractors during the course of performing the Services or the SaaS Services or delivering the Hardware (if configured by PASS) which are modifications, developments, enhancements or adaptations to or derivative works of PASS's products and services shall belong exclusively to PASS and shall be licensed to the Company under the terms of this Agreement. For the purposes of this Agreement, Intellectual Property Rights means all copyright, rights in relation to databases, design rights, registered designs, patents, trade and service marks (registered and unregistered), know-how, rights in or relating to confidential information or any other intellectual property rights of a similar nature anywhere in the world.
- (b) Subject to 9.3 (c) and the remainder of this clause 10.1, you are entitled to use the Documentation as you require for internal training and management requirements for the purposes of performance of this Agreement.

10.2 ESCROW

Where requested by you, PASS shall enter into a three-party source code escrow agreement in respect of the Software with the Company and the escrow agent which PASS has selected, the charges and fees associated with such arrangement being at your expense.

10.3 TRANSFER OF RIGHTS AND OBLIGATIONS

This Agreement is binding on you and us and on our respective successors and assigns. You may not transfer, assign, charge or otherwise dispose of this Agreement, or any of your rights or obligations arising under it, without the prior written consent of a duly authorised representative of PASS.

10.4 WAIVER

If we fail, at any time during the term of this Agreement, to insist upon strict performance of any of your obligations under this Agreement, or if we fail to exercise any of the rights or remedies to which we are entitled under this Agreement, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations.

A waiver by us of any default shall not constitute a waiver of any subsequent default. No waiver by us of any part of this Agreement shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing

10.5 SEVERABILITY

If any of the terms of this Agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

10.6 ENTIRE AGREEMENT

- a) This Agreement (and any document expressly referred to in it) represents the entire Agreement between us in relation to the provision of the Software, Hardware and Services and supersedes any prior Agreement, understanding or arrangement between us, whether oral or in writing.
- b) We each acknowledge that, in entering into this Agreement, neither of us has relied on any representation, undertaking or promise given by the other or which can be implied from anything said or written in negotiations between us prior to entering into this Agreement except as expressly stated in this Agreement.
- c) Neither of us shall have any remedy in respect of any untrue statement made by the other, whether orally or in writing, prior to the date we entered into this Agreement (unless such untrue statement was made fraudulently) and the other party's only remedy shall be for breach of contract as provided in this Agreement.

10.7 ANTI BRIBERY

Both parties shall comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 and shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.

10.8 NON SOLICITATION

Neither party shall (except with the prior written consent of the other) during the term of this Agreement, and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the management of this Agreement either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the other party.

10.9 INSURANCE

PASS shall effect and maintain with a reputable insurance company a policy or policies of insurance providing no less than £5,000,000 worth of cover in respect of risks which may be incurred by PASS arising out of the performance of this Agreement and shall provide a certificate evidencing such insurance upon request.

10.10 LAW AND JURISDICTION

If any dispute arises in connection with this Agreement, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (*CEDR*) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. The commencement of a mediation will not prevent the parties commencing or continuing court proceedings. This Agreement, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.

SCHEDULE 1 - SUPPORT TERMS AND CONDITIONS

1. PROVISION OF SERVICES

PASS shall provide a telephone based Help-Desk for software and technical support for the Software and the SaaS Service, available 365 days a year and 24 hours a day (Support Services). PASS shall also provide an error correction and software updating service. PASS shall endeavour to comply with the anticipated target response times and target fixes shown at the end of this schedule 1.

Upon receipt of a support request from you, PASS shall carry out diagnosis remotely by telephone and remote access link (where remote access is available) of any Software or SaaS Service fault reported in an item of Software or SaaS Service as defined in the quote.

Where calls relate to the interface with other software packages or environments, or similar issues where the fault cannot be diagnosed as being clearly caused by the supported Software or SaaS Service, PASS will use its reasonable endeavours to assist you in finding a resolution to the problem, subject to the acceptance by you of the additional charges to be levied, as outlined in clause 3 below.

2. ADDITIONAL CHARGES

Unless otherwise stated in the Quote, PASS will levy additional charges for Out of Hours service (where Office Hours are defined as Monday to Friday 08:00 to 17:00 GMT, excluding UK public and bank holidays, and Out of Hours is defined as all other times): at an initial charge of £100, then £100 per hour or part of an hour.

3. VARIATION

PASS operates an online ordering system for existing customers and you hereby agree to make use of the online ordering system such that Quotes managed using the online system are subject to the Agreement. In the event that you change the Software licensed from PASS, the changes to support charges will take immediate effect, unless otherwise stated in the Quote related to the additional Software.

4. COMPANY REQUIREMENTS

It is a condition of these terms and conditions that you report Software and SaaS Service faults, giving them a priority, acting reasonably for which you will receive an immediate call logging number from PASS. For the avoidance of doubt, PASS reserves the right to reprioritise the rating of the fault as necessary.

5. LIMITATIONS AND EXCLUSIONS

PASS will use all reasonable endeavours to respond to calls from you for the Support Services and provide updates of status and possible remedies reasonably promptly. We intend to respond to all faults by remote means within one hour of logging for all faults logged as priority or within 24 hours for all other faults

Where required and as determined by PASS as the appropriate response, a site visit will be arranged within 72 hours of a fault rated as priority and 120 hours for all other faults. However, no guarantee or warranty is given of any times for response or that PASS will be able to rectify the problem within a particular time-scale. Any modification or error correction to the Software is provided by secure FTP or email, but does not cover delivery by other means, for example by a courier. Any other such delivery can however be arranged at your cost.

PASS's obligation to provide the Support Services is conditional upon the proper use of the Software and SaaS Service and PASS shall be under no obligation to provide the Support Services where the faults arise from any of the following: misuse, incorrect use of or damage to the Software from whatever cause, including failure or fluctuation of electrical power; failure to maintain the necessary environmental conditions for use of the Software; use of the Software in combination with any equipment or software not provided by PASS or not designated by PASS, or any fault in any such equipment or software; any breach of the Company's obligations under this Agreement; any modification to the Software which is not expressly authorised by PASS; or operator error.

These support terms shall apply to the most recent generally available Release or Version of the Software ("LV") as well as the immediately preceding Release or Version ("LV-1"). Company understands and agrees that PASS shall have no obligation to support any Release or Version of the Software that is older than LV-1. For the purposes of this paragraph, the term "Release" shall be defined as a specific edition of the Software, designated by a number located to the left of the first

decimal point (such as Release 1.x or Release 2.x), and the term “Version” shall be defined as a specific edition of the Software, designated by a number located to the right of the first decimal point (such as Version x.1 or Version x.2).

Target Response times:

Level	Business Impact	Anticipated Target Response	Anticipated Target Fix
1	‘HIGH’ – where Customer’s operations are significantly affected. The Licensed Software or major components of the Licensed Software are inoperable or not working correctly and no work-around exists.	1 business hour	Emergency Service Pack
2	‘MEDIUM’ – where a minor component or function of the Licensed Software is inoperable or not working correctly, or a Problem exists in a major component, but a temporary work-around is available.	1 business day	Next planned release
3	‘LOW’ – where a problem in the Licensed Software is detected which has minimal impact on the daily operations, or for which a permanent work-around or fix is available.	2 business days	Next planned major release
4	‘NONE’ – a cosmetic change is proposed or a new feature is requested.	5 business days	Next user group review