

**Version – November 2021 v1**

## **MONARCH PERSONNEL SERVICES LIMITED**

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### **TERMS OF BUSINESS**

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## Background

- (A) The Company has developed certain software applications and platforms which it makes available to subscribers via QuestAI on a pay-per-use basis for the purpose of providing the Services.
- (B) The Client wishes to use QuestAI and the Company's Services in its business operations.
- (C) The Company has agreed to provide and the Client has agreed to take and pay for the Supplier's Services and the usage of QuestAI, subject to these Terms.

## Agreed Terms

### 1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in these Terms.

**Additional Services:** the additional services, including Skills Testing, offered by the Company, as further particularised on the Company's Website.

**Advice Document:** a document produced by the Company to the Client providing advice in relation to suggested wording for job vacancy advertisements.

**Authorised Users:** those employees, agents and independent contractors of the Client who are authorised by the Client to use the Services as further described in clause 2.2.4.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Campaign Term:** as further particularised in clause 13.1.

**Campaigns:** the campaigns purchased by the Client pursuant to clause 8.2 which entitle the Authorised Users to access and use QuestAI and the Services in accordance with these Terms.

**Candidates:** the individuals using QuestAI in connection with the Client's job vacancies.

**Change of Control:** the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls, controlled and the expression change of control shall be construed accordingly.

**Client:** the person who purchases the Services from the Company.

**Client Data:** the data inputted by the Client, Authorised Users, or the Company on the Client's behalf for the purpose of using QuestAI or the Services or facilitating the Client's use of QuestAI or the Services.

**Company:** Monarch Personnel Services Limited, a company incorporated in England and Wales with registered number 02841365 and whose registered office is at Mitchell Charlesworth LLP, 3<sup>rd</sup> Floor, 44 Peter Street, Manchester, M2 5GP.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.5 or clause 10.6.

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Legislation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**Effective Date:** the date of these Terms will be the date of the creation of each Campaign.

**Fee:** the fee payable by the Client to the Company for each Campaign, as set out in clause 8.

**Heightened Cybersecurity Requirements:** any laws, regulations, codes, guidance (from regulatory and advisory bodies. Whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the Client or an Authorised User (but not the Company) relating to security of network and information systems and security breach and incident reporting requirements, which may include the cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Normal Business Hours:** 9.00 am to 5.00 pm local UK time, each Business Day.

**QuestAI:** the automatic, scientific online recruitment tool used in connection with the Services.

**Services:** the services provided by the Company to the Client including the use of QuestAI, as further particularised on the Company's Website.

**Skills Testing:** means part of the Additional Services offered by the Company to the Client to which a Candidate shall undertake a bespoke skills based assessment, relevant to a specific job vacancy.

**Terms:** means these terms of business of the Company.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

**Website:** <https://www.monarchpersonnel.com/>

- 1.2 Clause headings shall not affect the interpretation of these Terms.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of these Terms.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of these Terms under that statute or statutory provision.
- 1.9 A reference to writing or written includes faxes and e-mail.
- 1.10 References to clauses are to the clauses of these Terms.
- 2. CAMPAIGNS**
- 2.1 Subject to the Client purchasing the Campaigns in accordance with clause 8.2, the restrictions set out in this clause 2 and the other terms and conditions of these Terms, the Company hereby grants to the Client a non-exclusive, non-transferable right,

without the right to grant sublicences, to permit the Authorised Users to use QuestAI in accordance with clause 13.1 solely for the Client's internal business operations.

2.2 In relation to the Authorised Users, the Client undertakes that:

- 2.2.1 it will not allow or suffer any Campaign to be used by anyone who is not an Authorised User;
- 2.2.2 each Authorised User shall keep a secure password for their use of QuestAI, and the Company advises that such password be changed no less frequently than every 3 months and that each Authorised User shall keep their password confidential;
- 2.2.3 it shall disable any Authorised User's access to QuestAI promptly upon termination or suspension of these Terms;
- 2.2.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to the Company within 5 Business Days of the Company's written request at any time or times;
- 2.2.5 it shall permit the Company or the Company's designated auditor to audit QuestAI in order to establish the name and password of each Authorised User and the Client's data processing facilities to audit compliance with these Terms. Each such audit may be conducted no more than once per quarter, at the Company's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Client's normal conduct of business; and
- 2.2.6 if any of the audits referred to in clause 2.2.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Company's other rights, the Client shall promptly disable such passwords and the Company shall not issue any new passwords to any such individual.

2.3 The Client, and the Client shall procure that Authorised Users shall not, access, store, distribute or transmit any Viruses, or any material during the course of its use of QuestAI that:

- 2.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 2.3.2 facilitates illegal activity;
- 2.3.3 promotes unlawful violence;
- 2.3.4 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 2.3.5 is otherwise illegal or causes damage or injury to any person or property;

and the Company reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to any material that breaches the provisions of this clause.

- 2.4 The Client shall not:
- 2.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Terms:
    - 2.4.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of QuestAI in any form or media or by any means; or
    - 2.4.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of QuestAI; or
  - 2.4.2 access all or any part of QuestAI in order to build a product or service which competes with QuestAI; or
  - 2.4.3 use QuestAI to provide services to third parties; or
  - 2.4.4 subject to clause 20.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make QuestAI available to any third party except the Authorised Users, or
  - 2.4.5 attempt to obtain, or assist third parties in obtaining, access to QuestAI, other than as provided under this clause 2; or
  - 2.4.6 introduce or permit the introduction of any Virus or Vulnerability into QuestAI, or the Company's network and information systems.
- 2.5 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, QuestAI and, in the event of any such unauthorised access or use, promptly notify the Company.
- 2.6 The rights provided under this clause 2 are granted to the Client only, and shall not be considered granted to any subsidiary or holding company of the Client.
- 3. SERVICES**
- 3.1 The Company shall, during the Campaign Term, provide the Services to the Client on and subject to these Terms.
- 3.2 The Services provided by the Company on behalf of the Client are set out on the Company's Website in all material respects and shall be carried out during Normal Business Hours.
- 3.3 The Company shall use commercially reasonable endeavours to make the QuestAI available 24 hours a day, seven days a week, except for:
- 3.3.1 planned maintenance; and
  - 3.3.2 unscheduled maintenance performed outside Normal Business Hours, provided that the Company has used reasonable endeavours to give the Client at least 6 Normal Business Hours' notice in advance.

- 3.4 The Company shall also make available to the Client a copy of their Advice Document. The Advice Document shall set out the Company's advisory recommendations around terms to use and not use when advertising job vacancies, which may assist in maximising successful recruitment of Candidates. The Advice Document is, however, advisory only and the Company accepts no liability in relation to any use of terms contained in the Advice Document or otherwise, the final wording used by the Client in a job vacancy advertisement, the success of advertising job vacancies and/or any Candidates recruited as a result of the Advice Document.
- 3.5 The Company also offers Additional Services which shall be updated from time to time and are available to view on the Company's Website. The Additional Services shall be chargeable in addition to the Fee at the discretion of the Company and on a case by case basis.
- 3.6 Should the Client wish to purchase the Skills Testing from the Company, the Client shall have an agreed shortlist of Candidates for the relevant job vacancy. Skills Testing will be chargeable in relation to each Candidate the Client requires to use QuestAI.
- 3.7 The Company accepts no liability arising out of a Candidate's refusal to undertake the Skills Testing and no refund shall be paid by the Company to the Client should such a scenario arise.

#### **4. DATA PROTECTION**

- 4.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 4 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 4.2 The parties acknowledge that for the purposes of the Data Protection Legislation, if the Company processes any personal data on the Client's behalf when performing its obligations under these Terms, the Client is the controller and the Company is the processor.
- 4.3 Without prejudice to the generality of clause 4.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Company for the duration and purposes of these Terms.
- 4.4 Without prejudice to the generality of clause 4.1, the Company shall, in relation to any Personal Data processed in connection with the performance by the Company of its obligations under these Terms:
- 4.4.1 process that Personal Data only on the documented written instructions of the Client unless the Company is required by Domestic Law to otherwise process that Personal Data. Where the provider is relying on Domestic Law as the basis for processing Personal Data, the Company shall promptly notify the Client of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Company from so notifying the Client;
  - 4.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data,

appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 4.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
  - 4.4.4 assist the Client in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 4.4.5 notify the Client without undue delay on becoming aware of a Personal Data Breach;
  - 4.4.6 at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of these Terms unless required by Domestic Law to store the Personal Data; and
  - 4.4.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 4 and immediately inform the Client if, in the opinion of the Company, an instruction infringes the Data Protection Legislation.
- 4.5 The Client does not consent to the Company appointing any third-party processor of Personal Data under these Terms.
  - 4.6 Either party may, at any time on not less than 30 days' notice, revise this clause 4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to these Terms).
  - 4.7 The Company accepts no liability in relation to any breach or infringement of Data Protection Legislation where the Client downloads, copies or prints any document containing Personal Data.

## **5. THIRD PARTY PROVIDERS**

The Client acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Company makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Client, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Client and the



relevant third party, and not the Company. The Company recommends that the Client refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Company does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## **6. COMPANY'S OBLIGATIONS**

- 6.1 The Company undertakes that the Services will be performed substantially and with reasonable skill and care.
- 6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of QuestAI or the Services contrary to the Company's instructions, or modification or alteration of QuestAI or the Services by any party other than the Company or the Company's duly authorised contractors or agents. If QuestAI or the Services do not conform with the foregoing undertaking, the Company will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1.
- 6.3 The Company:
  - 6.3.1 does not warrant that:
    - 6.3.1.1 the Client's use of QuestAI or the Services will be uninterrupted or error-free; or
    - 6.3.1.2 that QuestAI, the Services and/or the information obtained by the Client through the Services will meet the Client's requirements; or
    - 6.3.1.3 QuestAI or the Services will be free from Vulnerabilities or Viruses; or
    - 6.3.1.4 QuestAI or Services will comply with any Heightened Cybersecurity Requirements.
  - 6.3.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that QuestAI and the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.4 These Terms shall not prevent the Company from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under these Terms.
- 6.5 The Company warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Terms.

## 7. CLIENT'S OBLIGATIONS

### 7.1 The Client shall:

- 7.1.1 provide the Company with:
  - 7.1.1.1 all necessary co-operation in relation to these Terms;  
and
  - 7.1.1.2 all necessary access to such information as may be required by the Company;

in order to provide the Services, including but not limited to Client Data, security access information and configuration services;
- 7.1.2 without affecting its other obligations under these Terms, comply with all applicable laws and regulations with respect to its activities under these Terms;
- 7.1.3 carry out all other Client responsibilities set out in these Terms in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, the Company may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 7.1.4 ensure that the Authorised Users use the Services and QuestAI in accordance with these Terms and shall be responsible for any Authorised User's breach of these Terms;
- 7.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Company, its contractors and agents to perform their obligations under these Terms including without limitation, QuestAI and the Services;
- 7.1.6 be, to the extent permitted by law and except as otherwise expressly provided in these Terms, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Company's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet;
- 7.1.7 not misrepresent, or purport to misrepresent themselves to any other person at any time during the Campaign;
- 7.1.8 not and procure that Authorised Users shall not, pursuant to the Employment Agencies Act 1973 (the "**Act**") be, or operate as, an employment agency, pursuant to section 13(2) of the Act and/or an employment business, pursuant to section 13(3) of the Act, when utilising QuestAI; and
- 7.1.9 not and procure that Authorised Users shall not, use QuestAI in any way that might be competitive with the Company, without the Company's prior written consent.

- 7.2 The Client shall own all right, title and interest in and to all of the Client Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Client Data.

## **8. CHARGES AND PAYMENT**

- 8.1 The Client shall pay a fixed sum of £695 per Campaign for the use of QuestAI and the provision of the Services by the Company.
- 8.2 The Client shall pay the Fee to the Company for the Campaign in accordance with this clause 8.
- 8.3 The Client shall on the Effective Date provide to the Company valid, up-to-date and complete credit card details acceptable to the Company and any other relevant valid, up-to-date and complete contact and billing details and, if the Client provides its credit card details to the Company, the Client hereby authorises the Company to bill such credit card on the Effective Date for the Fee payable in respect of the Campaign.
- 8.4 If the Company does not receive payment on the Effective Date, and without prejudice to any other rights and remedies of the Company the Company shall, without liability to the Client, prevent the Client's access to QuestAI and all of the Services and the Company shall be under no obligation to provide access to QuestAI or all of the Services while the Fee remains unpaid
- 8.5 All amounts and fees stated or referred to in these Terms:
- 8.5.1 shall be payable in pounds sterling; and
  - 8.5.2 are, subject to clause 12.3.2, non-cancellable and non-refundable; and
  - 8.5.3 are subject to value added tax.

## **9. PROPRIETARY RIGHTS**

- 9.1 The Client acknowledges and agrees that the Company and/or its licensors own all Intellectual Property Rights in the Services and QuestAI. Except as expressly stated herein, these Terms do not grant the Client any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or QuestAI.
- 9.2 The Company confirms that it has all the rights in relation to the Services and QuestAI that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of these Terms.

## **10. CONFIDENTIALITY**

- 10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under these Terms. A party's Confidential Information shall not be deemed to include information that:
- 10.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
  - 10.1.2 was in the other party's lawful possession before the disclosure;

- 10.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - 10.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 10.2 Subject to clause 10.4, each party shall hold the other's Confidential Information in confidence and 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 these Terms.
- 10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of these Terms.
- 10.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.5 The Client acknowledges that details of the Services and QuestAI, and the results of any performance tests of the Services and QuestAI, constitute the Company's Confidential Information.
- 10.6 The Company acknowledges that the Client Data is the Confidential Information of the Client.
- 10.7 No party shall make, or permit any person to make, any public announcement concerning these Terms without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 10.8 The above provisions of this clause 10 shall survive termination of these Terms, however arising.

## **11. INDEMNITY**

- 11.1 The Client shall defend, indemnify and hold harmless the Company against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Client's use of the Services and/or QuestAI, provided that:
  - 11.1.1 the Client is given prompt notice of any such claim;
  - 11.1.2 the Company provides reasonable co-operation to the Client in the defence and settlement of such claim, at the Client's expense; and
  - 11.1.3 the Client is given sole authority to defend or settle the claim.
- 11.2 The Company shall defend the Client, its officers, directors and employees against any claim that the Client's use of the Services or QuestAI in accordance with these

Terms infringes any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Client for any amounts awarded against the Client in judgment or settlement of such claims, provided that:

- 11.2.1 the Company is given prompt notice of any such claim;
  - 11.2.2 the Client does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to the Company in the defence and settlement of such claim, at the Company's expense; and
  - 11.2.3 the Company is given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of any claim, the Company may procure the right for the Client to continue using QuestAI or the Services, replace or modify QuestAI or the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate these Terms on 2 Business Days' notice to the Client without any additional liability or obligation to pay liquidated damages or other additional costs to the Client.
- 11.4 In no event shall the Company, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement is based on:
  - 11.4.1 a modification of the Services or QuestAI by anyone other than the Company; or
  - 11.4.2 the Client's use of the Services or QuestAI in a manner contrary to the instructions given to the Client by the Company; or
  - 11.4.3 the Client's use of the Services or QuestAI after notice of the alleged or actual infringement from the Company or any appropriate authority.
- 11.5 The foregoing and clause 12.3.2 states the Client's sole and exclusive rights and remedies, and the Company's (including the Company's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## **12. LIMITATION OF LIABILITY**

- 12.1 Except as expressly and specifically provided in these Terms:
  - 12.1.1 the Client assumes sole responsibility for results obtained from the use of the Services and QuestAI by the Client, and for conclusions drawn from such use. The Company shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Company by the Client in connection with QuestAI or the Services, or any actions taken by the Company at the Client's direction;
  - 12.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Terms; and

- 12.1.3 the Services and QuestAI are provided to the Client on an "as is" basis.
- 12.2 Nothing in these Terms excludes the liability of the Company:
  - 12.2.1 for death or personal injury caused by the Company's negligence; or
  - 12.2.2 for fraud or fraudulent misrepresentation.
- 12.3 Subject to clause 12.1 and clause 12.2:
  - 12.3.1 the Company shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these Terms; and
  - 12.3.2 the Company's total aggregate liability in contract (including in respect of the indemnity at clause 11.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms shall be limited to the total Fees paid for the Campaigns during the 12 months immediately preceding the date on which the claim arose.
- 12.4 Nothing in these Terms excludes the liability of the Client for any breach, infringement or misappropriation of the Company's Intellectual Property Rights.
- 13. TERM AND TERMINATION**
- 13.1 These Terms shall, unless otherwise terminated as provided in this clause 13, commence on the Effective Date and each Campaign shall continue for a maximum period of 3 months(**Campaign**).
- 13.2 Without affecting any other right or remedy available to it, the Company may terminate these Terms with immediate effect by giving written notice to the Client if:
  - 13.2.1 the Client commits a material breach of any other term of these Terms and (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
  - 13.2.2 the Client 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;
  - 13.2.3 the Client commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent

amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;

- 13.2.4 the Client applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- 13.2.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Client other than for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;
- 13.2.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Client (being a company, partnership or limited liability partnership);
- 13.2.7 the holder of a qualifying floating charge over the assets of the Client (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- 13.2.8 a person becomes entitled to appoint a receiver over the assets of the Client or a receiver is appointed over the assets of the Client;
- 13.2.9 a creditor or encumbrancer of the Client attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Client's assets and such attachment or process is not discharged within 14 days;
- 13.2.10 any event occurs, or proceeding is taken, with respect to the Client in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2.2 to clause 13.2.10 (inclusive);
- 13.2.11 the Client suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 13.2.12 the Client's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of these Terms is in jeopardy; or
- 13.2.13 there is a change of control of the Client (within the meaning of section 1124 of the Corporation Tax Act 2010).

13.3 On termination of these Terms for any reason:

- 13.3.1 all licences granted under these Terms shall immediately terminate and the Client shall immediately cease all use of QuestAI;
- 13.3.2 the Company shall destroy or otherwise dispose of any of the Client Data in its possession at the end of the Campaign, or, any extended Campaign. The Company shall not store any back-up of Client Data; and

- 13.3.3 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

**14. FORCE MAJEURE**

The Company shall have no liability to the Client under these Terms if it is prevented from or delayed in performing its obligations under these Terms, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Client is notified of such an event and its expected duration.

**15. VARIATION**

No variation of these Terms shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**16. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**17. RIGHTS AND REMEDIES**

Except as expressly provided in these Terms, the rights and remedies provided under these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.

**18. SEVERANCE**

- 18.1 If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these Terms.
- 18.2 If any provision or part-provision of these Terms is deemed deleted under clause 18.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**19. ENTIRE AGREEMENT**

- 19.1 These Terms constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.



19.2 Each party acknowledges that in entering into these Terms it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms.

19.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Terms.

19.4 Nothing in this clause shall limit or exclude any liability for fraud.

## **20. ASSIGNMENT**

20.1 The Client shall not, without the prior written consent of the Company, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms.

20.2 The Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms.

## **21. NO PARTNERSHIP OR AGENCY**

Nothing in these Terms is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **22. THIRD PARTY RIGHTS**

These Terms do not confer any rights on any person or party (other than the parties to these Terms and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **23. COUNTERPARTS**

23.1 These Terms may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

23.2 Transmission of the executed signature page of a counterpart of these Terms by electronic signature shall take effect as the transmission of an executed "wet-ink" counterpart of these Terms.

23.3 No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

## **24. NOTICES**

24.1 Any notice required to be given under these Terms shall be in writing and shall be sent by email to the other party's email address as confirmed by both parties in writing.

24.2 A notice sent by email shall be deemed to have been received at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 24.2, business hours means 9:00am to 5:00pm Monday to Friday on a day that is not a public holiday in the place of the receipt.

24.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**25. ELECTRONIC SIGNATURE**

Each party agrees to sign these Terms by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of our intention to be bound by these Terms as if signed by each party's manuscript signature.

**26. GOVERNING LAW**

These Terms and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**27. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Terms or its subject matter or formation (including non-contractual disputes or claims).

These Terms have been entered into on the Effective Date.