

# Schedule 1

## Standard Terms and Conditions of Use of Panacea Software and Services

These terms are binding on any use of the Services and apply to all use of the Services from the time that Panacea provides the Customer and its Authorised Users with User Access to Panacea Software and the Services.

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**"Acceptance"** means the deemed acceptance of the Panacea Software and the Services by the Customer, in accordance with Clause 7. 'Accept' and 'Accepted' in the context of 'Acceptance' shall be construed accordingly;

**"Authorised Users"** means those employees, agents, independent contractors, clients and suppliers of the Customer who are authorised by the Customer to use the Panacea Software in accordance with clause 5 of this agreement and subject to payment of the appropriate Subscription Fees;

**"Authorised User Type"** defines the User Access restrictions for each type of Authorised User, as set out in Panacea's User Access Restrictions as made available at [www.panacea-software.com](http://www.panacea-software.com) or such other website address as may be notified to the Customer from time to time;

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

**"Commencement Date"** is the date of the Customer's first use of any of the Services;

**"Commercial Contact"** The person(s) named by each party as the contact and/or signatory for that party, as confirmed in writing on the Commencement Date, should the Commercial Contact for either party change that party shall notify the other of the new Commercial Contact in writing at least 30 days in advance of such a change;

**"Confidential Information"** means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11 of this agreement;

**"Customer"** means the organisation which purchases User Subscriptions from Panacea for the Software and the Services;

**"Customer Data"** is the data input by the Customer, Authorised Users, or Panacea on the Customer's behalf for the purpose of using the Software or the Services or facilitating the Customer's use of the Software or the Services;

**"Data Protection Legislation"** means the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy;

**"UK Data Protection Legislation"** means any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

**"Documentation"** means the documents made available to the Customer by Panacea online via [www.panacea-software.com](http://www.panacea-software.com) or other such web address or means notified by Panacea to the Customer from time to time which sets out a description for the Services and the user instructions for the Services;

**"Information" written** information, including but not limited to documentation, specifications, reports, data, notes, drawings, models,

patterns, samples, software, computer outputs, designs, circuit diagrams, inventions, whether patentable or not and know-how;

**"Initial Subscription Term"** shall commence on the Commencement Date and shall continue for a period of twelve months from Acceptance unless otherwise agreed in writing by both parties;

**"Intellectual Property Right(s)"** any trade mark, patent, petty patent, registered design, copyright, database right, design right, semiconductor topography right, know-how, or any similar right exercisable in any part of the world and shall include any applications for the registrations of any patents or registered designs or similar registrable rights in any part of the world;

**"Modification"** any maintenance release or upgrade to existing functionality;

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

**"Panacea"** means Panacea Applications Limited incorporated and registered in England and Wales with registered Company No. 05054421 and whose registered office is at 89 High Street, Hadleigh, Nr Ipswich, Suffolk IP7 5EA

**"Panacea Software"** all Panacea's proprietary computer programs in source and object code, created by Panacea or its group companies (or by a third party on behalf of Panacea) that may be supplied to the Customer under this agreement (including all enhancements, modifications, updates, versions and replacement or amendment products from time to time offering the same or similar functionality) and all Documentation and Information necessary to enable their proper operation.

**"Panacea Software Rate Card"** means the list of Panacea's fees for the Services as displayed online via [www.panacea-software.com](http://www.panacea-software.com) or other such web address or means notified by Panacea to the Customer from time to time.

**"Renewal Period"** means the period described in clause 2.1;

**"Required Modules"** means those features and elements of Panacea Software which the Customer purchases from Panacea for use in its business operations within the provisions of these terms;

**"Services"** means the subscription services provided by Panacea to the Customer within the provisions of these terms to facilitate User Access to the Required Modules and all related services and supplies, including but not limited to User Subscriptions, set-up, configuration, consultancy, development, hosting, maintenance, back-up, training, support, storage, the Software and the Web Application;

**"Software"** means the Web Application, Panacea Software and any other online applications or software provided by Panacea to the Customer as part of the Services;

**"Subscription Fees"** means all fees payable to Panacea by the Customer for the Services;

**"Subscription Term"** has the meaning given in clause 2.1, being the Initial Subscription Term together with any subsequent Renewal Periods;

**"Support Services Policy"** means Panacea's policy for providing support in relation to the Services as made available at [www.panacea-software.com](http://www.panacea-software.com) or such other website address as may be notified to the Customer from time to time;

**"User Access"** means authorised use of the Required Modules by Authorised Users subject to payment of Subscription Fees;

**"User Subscriptions"** means the subscriptions purchased by the Customer on payment of the Subscription Fees pursuant to clause 10 which entitle Authorised Users to access and use the Required Modules and associated Documentation in accordance with the terms and conditions of this agreement;

**"Virus"** or **"Malicious Software"** means 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;

**"Web Application"** means the hosted web application providing User Access to the Panacea Software.

1.2 The headings to the provisions in this agreement are for reference only and shall not affect their interpretation. Save where the context otherwise requires, references to clauses, annexes, appendices and schedules are to clauses, annexes, appendices and schedules of this agreement.

1.3 Unless the context otherwise requires:

(a) references to Panacea and the Customer include their permitted representatives, successors and assigns;

(b) references to statutory provisions include those statutory provisions as amended or re-enacted; and In the case of conflict or ambiguity between any provision contained in the body of this agreement and any provision contained in the annexes, appendices or schedules, the provision in the body of this agreement shall take precedence.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.

1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.6 The annexes, appendices and schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the annexes, appendices and the schedules.

### 2. DURATION

2.1 The agreement shall, unless otherwise terminated as provided in clause 13, commence on the Commencement Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless

(a) either party notifies the other party of termination, in writing, at least ninety days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

(b) otherwise terminated in accordance with the provisions of this agreement;

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and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.

## 3. SERVICES

3.1 Panacea shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.

(c) Maintain Panacea Software in accordance with Clause 4 for the Subscription Term on payment of the Subscription Fees;

(d) Use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for planned or unscheduled maintenance for which Panacea will use reasonable endeavours to perform outside Normal Business Hours;

(e) provide bespoke amendments to the Panacea Software as agreed between the Parties from time to time and subject to payment by the Customer of the Subscription Fees for bespoke services as set out in this agreement.

## 4. PANACEA'S OBLIGATIONS

4.1. Panacea undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

4.2. The undertaking at clause 4 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Panacea's instructions, or modification or alteration of the Services by any party other than Panacea or Panacea's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Panacea will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 4. Notwithstanding the foregoing, Panacea:

(a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

(b) 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 Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

4.3. This agreement shall not prevent Panacea 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 this agreement.

4.4. Panacea warrants:

(a) that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement

(b) that the Panacea Software is free from all Viruses that could have been reasonably detected by using commercially available virus detection software;

4.5. Panacea shall maintain the Panacea Software, including releases and upgrades, in accordance with the Maintenance Policy, as made available at [www.panacea-software.com](http://www.panacea-software.com) or such other website address as may be notified to the Customer from time to time, such document may be amended from time to time by Panacea at its sole discretion.

4.6. All data including Customer Data shall be backed up daily in accordance with the Back-Up Policy available at [www.panacea-software.com](http://www.panacea-software.com) or such other website address as may be notified to the Customer from time to time; such document may be amended from time to time by Panacea at its sole discretion.

The Customer may purchase enhanced back-up services separately at Panacea's then current rates.

4.7. Panacea will, as part of the Services and at no additional cost to the Customer, provide the Customer with five hours of Panacea's standard customer support services each calendar month during Normal Business Hours in accordance with Panacea's Support Services Policy in effect at the time that the Services are provided. Panacea may amend the Support Services Policy in its sole and absolute discretion from time-to-time. Additional support will be charged at Panacea's then current daily rate or part thereof with the minimum charge period of fifteen minutes. The Customer may purchase enhanced support services separately at Panacea's then current rates.

4.8. Panacea shall have no liability for any claim resulting from the use of the 3rd party applications, software or services which may be used via or in combination with the Panacea Software and Services and are not supplied or approved by Panacea or any modification of any item of the Services by a party other than Panacea or its authorised agent

## 5. USER SUBSCRIPTIONS

5.1. Subject to the Customer purchasing the User Subscriptions in accordance with clause 10, the restrictions set out in this clause 5 and the other terms and conditions of this agreement, Panacea grants to the Customer a non-exclusive, royalty-free, non-transferable right to permit the Authorised Users to use the Software, the Services and the Documentation during the Subscription Term solely for the Customer's internal business purposes, such purposes strictly exclude any rights permitting the Customer to copy the design, processes and/or structure of the Software, the Services and/or the Documentation.

5.2. Subject to clauses 5.2(a) and 5.2 (b), the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number already purchased and Panacea shall grant access to the Services and Documentation to such additional Authorised Users in accordance with the provisions of this agreement.

(a) If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify Panacea in writing. Panacea shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request.

(b) If Panacea approves the Customer's request to purchase the additional User Subscriptions, the Customer shall, within 10 days of the date of Panacea's invoice, pay Panacea the relevant fees for such additional User Subscriptions, as set out in the Panacea Software Rate Card and, if such additional User Subscriptions are purchased by the Customer part-way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be prorated for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

5.3. In relation to the Authorised Users, the Customer undertakes that:

(a) the maximum number of users that it authorises to access and use the Services and the Documentation shall not exceed the number of valid User Subscriptions it has purchased from time to time;

(b) it will not allow or suffer any User 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 Services and/or Documentation;

(c) each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than quarterly and that each Authorised User shall keep his password confidential and shall not share his password with any other person or persons;

(d) it shall permit Panacea to audit the Services in order to establish the name and password of each Authorised User. Such right shall be exercised in such a manner as not to interfere with the Customer's use of the Service;

(e) if any of the audits referred to in clause (d) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Panacea's other rights, the Customer shall promptly disable such passwords and shall not provide any new passwords to any such individual; and

(f) if any of the audits referred to in clause (d) reveal that the Customer has underpaid Subscription Fees to Panacea, then without prejudice to Panacea's other rights, the Customer shall pay to Panacea an amount equal to such underpayment as calculated in accordance with the Subscription Fees within 10 Business Days of the date of the relevant audit.

5.4. The Customer acknowledges that it is licensed to use the Services only in accordance with the express terms of this agreement.

5.5. The Customer shall provide Panacea with names and contact details for all Authorised Users.

5.6. The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

(a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

(b) facilitates illegal activity;

(c) depicts sexually explicit images;

(d) promotes unlawful violence;

(e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

(f) in a manner that is otherwise illegal or causes damage or injury to any person or property; and Panacea reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

5.7. The Customer and its employees, agents, independent contractors, clients and suppliers shall **not**:

(a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

i. attempt to copy, 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

ii. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

(b) access all or any part of the Software, Services and/or Documentation in order to build any product(s), service(s) and/or documentation for its/their internal use and/or which competes with the Software, the Services and/or the Documentation; or

(c) use the Software, the Services and/or Documentation to provide services to third parties

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which compete with the Software, the Services, the Documentation; or

(d) subject to clause 20.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or

(e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 5; and

5.8. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software, Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Panacea.

5.9. The rights provided under this clause 5 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.

5.10. Notwithstanding any other Condition, Panacea grants to the Customer non-exclusive, royalty free, world-wide rights, to copy and use information supplied under the agreement or derived by the Customer from the Services as necessary for the purpose of interfacing with the Customer's systems as required for optimal use of the Panacea Software. For such purpose, Panacea shall provide such additional information as the Customer may request. The Customer shall pay the costs of any additional work or Services required by the Customer for integration purposes.

## 6. CUSTOMER'S OBLIGATIONS

6.1. The Customer shall:

(a) provide Panacea with:

- i. all necessary co-operation in relation to this agreement; and
- ii. all necessary access to such information as may be required by Panacea;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration requirements and services;

(b) comply with all applicable laws and regulations with respect to its activities under this agreement;

(c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Panacea may adjust any agreed timetable or delivery schedule as reasonably necessary;

(d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;

(e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Panacea, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;

(f) ensure that its network and systems comply with the relevant specifications provided by Panacea from time to time; and

(g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Panacea's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

6.2. The Customer accepts responsibility for the selection of the Panacea Software to achieve its intended results.

## 7. ACCEPTANCE

7.1. Panacea shall demonstrate to the Customer that the Software complies with the Documentation after the Customer has provided the required information for configuration and set-up in accordance with clause 6.1(a).

7.2. The Customer shall accept the Services immediately after Panacea has demonstrated that the Services have been correctly configured in accordance with the Documentation. The Customer shall, if required by Panacea, sign an acceptance certificate acknowledging such acceptance.

7.3. If the Customer shall not provide any of the information required in compliance with clause 6.1(a) or shall fail to make itself available to attend acceptance tests within the said period of 10 Business Days then the Customer shall be deemed to have accepted the Services.

7.4. The Services shall not be deemed to have failed acceptance testing by reason of any failure to provide any facility or functionality not specified in the Documentation or due to failure to access the Services due to the fault of the Customer.

7.5. Subject to the provisions of this clause 7, the Customer may reject any Services that do not accord with the agreement within 10 Business Days of their respective delivery. The Customer shall be deemed to have accepted Services that are not so rejected.

7.6. If no configuration or development is required by the Customer and agreed by Panacea prior to the Commencement Date then the Customer is deemed to have accepted the Software and the Services upon the Commencement Date.

## 8. COPYING

8.1. No copies may be made of the Software, the Services or the Documentation without the prior written consent of Panacea.

## 9. MODIFICATIONS

9.1. Panacea shall inform the Customer of any Modifications and shall offer to provide such Modifications to the Customer on the terms and additional charges as set out in this agreement.

## 10. PRICING AND PAYMENT

10.1. The Customer shall pay the Subscription Fees to Panacea in accordance with the Panacea Rate Card and this Clause 10 of this agreement.

10.2. The Customer shall, on the Commencement Date, provide to Panacea valid, up-to-date and approved purchase order information acceptable to Panacea and any other relevant valid up-to-date and complete contact and billing details and Panacea shall invoice the Customer:

(a) On the Commencement Date for the Subscription Fees payable in respect of the Initial Subscription Term;

(b) On the Commencement Date for fifty-percent (50%) of any Set-up or Development fees set out on the Panacea Rate Card, and thereafter Panacea will invoice the balance of these fees on a monthly basis according to the percentage of work completed;

(c) Subject to clause 2, prior to each anniversary of Acceptance for the Subscription Fees payable in respect of the next Renewal Period;

(d) at any time whilst using the Services excess data storage will be charged should the Customer exceed 50GB of disk storage space;

(e) on Panacea incurring travel and subsistence costs in fulfilment of the Services, these will be charged to the Customer at cost plus a 10% administration fee;

(f) on provision of any additional User Subscriptions and/or any agreed consultancy services, bespoke services, development, training, bespoke templates, enhanced support or maintenance services, or any fees which are chargeable under the provisions of this agreement during the Subscription Term; and the

Customer shall pay each invoice within 10 business days after the date of such invoice, unless alternative payment terms are explicitly agreed in writing by Panacea.

10.3. Subscription Fees for each Renewal Period will be at the rates published on the Panacea Software Rate Card current at the start of that Renewal Period.

10.4. Without prejudice to clause 10.1 or 10.3, Subscription Fees may be increased annually in line with the greater of the Consumer Price Index (CPI), the Retail Price Index (RPI) or the Service Producer Price Index (SPPPI) during the preceding twelve-month period.

10.5. Advance payment of fifty per cent (50%) of any Subscription Fees for development or set-up work is required. Fees for on-going work are payable on a monthly basis according to the percentage of work completed.

10.6. All amounts and fees stated or referred to in this agreement:

(a) shall be payable in pounds sterling;

(b) are, subject to clause 15.41(b), non-cancellable and non-refundable;

(c) are exclusive of value added tax, which shall be added to Panacea's invoice(s) at the appropriate rate.

10.7. Panacea may amend the Panacea Software Rate Card in its sole and absolute discretion from time to time.

10.8. The Customer shall pay all fees invoiced by Panacea in accordance with the provisions of this agreement and shall ensure that payment is made in full within 10 Business Days after the date of such invoice, unless alternative payment terms are explicitly agreed in writing by Panacea.

10.9. Time for payment shall be of the essence of the Agreement.

10.10. If Panacea has not received payment within 28 days after the due date, and without prejudice to any other rights and remedies of Panacea:

(a) Panacea may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Panacea shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

(b) charge interest on such sum from the due date for payment at the rate set by the Late Payment of Commercial Debts (Interest) Act 1998 amended 2002, commencing on the due date and continuing until fully paid, whether before or after judgment.

## 11. CONFIDENTIALITY

11.1. Each party may be given access to Confidential Information from 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:

(g) is or becomes publicly known other than through any act or omission of the receiving party;

(h) was in the other party's lawful possession before the disclosure;

(i) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

(j) is independently developed by the receiving party, which independent development can be shown by written evidence; or

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

11.2. 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.

11.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to

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which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

11.4. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

11.5. The Customer acknowledges that details of the Software, the Services, the Documentation and the results of any performance tests of the Services, constitute Panacea's Confidential Information.

11.6. Panacea acknowledges that the Customer Data is the Confidential Information of the Customer.

11.7. The provisions of this clause 11 shall survive termination of this agreement and shall remain in full force and effect notwithstanding termination of this agreement, however arising.

11.8. No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (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.

11.9. Each party agrees that it will not, directly or indirectly, hire or solicit for employment, or retain as a consultant or independent contractor or otherwise, any of the employees of the other Party, which shall include any such person who has been an employee of the respective Party within 120 days prior, during and for a period of one (1) year subsequent to the termination of this Agreement, except that a Party shall not be precluded from hiring or retaining any such person whose contract with the other Party has been terminated prior to commencement of recruitment, hiring or employment discussions with the Party.

## 12. PROPRIETARY RIGHTS

12.1. The Customer acknowledges and agrees that Panacea and/or Panacea's licensors own all intellectual property rights in the Software, the Services and the Documentation, including any bespoke modifications made to the Software, the Service or the Documentation by agreement between the parties or at the Customer's request. Except as expressly stated herein, the Customer shall have no rights to, in, patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licenses in respect of the Software, the Services or the Documentations.

12.2. Panacea confirms that it has all the rights in relation to the Software, the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

12.3. Panacea may, at its expense, modify or replace the Services to avoid any alleged or actual infringement or breach. The modification or replacement must not affect the performance or functionality of the Services.

## 13. TERMINATION

13.1. Without affecting any other right or remedy available to it, either party may terminate this Agreement at any time on written notice to the other if the other:

- commits a material or persistent breach of any of the terms of this agreement which breach is incapable of remedy, or (if such breach is capable of remedy) fails to remedy that breach within a period of 20 Business Days after being notified in writing to do so;
- fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

(c) 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;

(d) 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 that other party with one or more other companies or the solvent reconstruction of that other party; or

(e) 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 that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(f) 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 other party;

(g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

(h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(i) a creditor or encumbrancer of the other party 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 other party's assets and such attachment or process is not discharged within 14 days;

(j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1;

(k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

13.2 Without affecting any right or remedy available to it, Panacea may terminate this Agreement immediately on written notice to the Customer if the Customer: (a) commits a breach of clause 5.3, 5.6, 5.7 and/or 5.8; or (b) gives notice in writing to Panacea, under clause 18.5, of an objection and such objection is not resolved within 28 days of such notice in writing from the Customer.

13.3 Termination by either party in accordance with the rights contained in clause 13 shall be without prejudice to any other rights or remedies of that party accrued prior to termination.

13.4 On termination for any reason:

(a) all licences and rights granted to the Customer under this agreement shall immediately cease;

(b) the Customer shall cease all activities authorised by this agreement;

(c) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

(d) Panacea may destroy or otherwise dispose of any of the Customer Data in its possession, subject to the terms of clause 21.6. The Customer shall pay all reasonable expenses incurred by Panacea in returning or disposing of Customer Data; and

(e) 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.

(f) the Customer shall immediately pay to Panacea any sums due to Panacea under this Agreement.

13.5 In the event of the Termination of this agreement in pursuant of clauses 13.1 or 13.2 the Customer shall immediately pay all invoices then outstanding as well as a sum equal to the Subscription Fees that would have been paid (but for such termination) until the date on which this Agreement could have been terminated for convenience by the Customer.

13.6 The Customer represents and warrants:

a) It has taken independent legal advice on this clause 13.5 and

b) It considers that this clause is legitimate to protect Panacea's reasonable business interests and is wholly proportionate, fair and reasonable, particularly given that the majority of Panacea's work for the Customer is likely to be completed during the earlier part of the initial subscription term and the renewal periods.

13.7 Any breach of clause 5.3, 5.6, 5.7 and/or 5.8 would constitute a material breach of for the purposes of clause 13.1(a).

## 14. INDEMNITY

14.1. The Customer shall defend, indemnify and hold harmless Panacea 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 Customer's use of the Services and/or Documentation, provided that:

(a) the Customer is given prompt notice of any such claim;

(b) Panacea provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

(c) the Customer is given sole authority to defend or settle the claim.

14.2. Panacea shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

(a) Panacea is given prompt notice of any such claim;

(b) the Customer provides reasonable co-operation to Panacea in the defence and settlement of such claim, at Panacea's expense; and

(c) Panacea is given sole authority to defend or settle the claim.

14.3. In the defence or settlement of any claim, Panacea may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

14.4. In no event shall Panacea, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

(a) a modification of the Services or Documentation by anyone other than Panacea; or

(b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Panacea; or

(c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Panacea or any appropriate authority.

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14.5. The foregoing and clause 15.41(b) state the Customer's sole and exclusive rights and remedies, and Panacea's (including Panacea's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## 15. LIMITATION OF LIABILITY

15.1. This clause 15 sets out the entire financial liability of Panacea (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

- (a) arising under or in connection with this agreement;
  - (b) in respect of any use made by the Customer of the Software, Services and Documentation or any part of them; and
  - (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 15.2. Except as expressly and specifically provided in this agreement:
- (d) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Panacea shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Panacea by the Customer in connection with the Services, or any actions taken by Panacea at the Customer's direction;
  - (e) 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 this agreement; and
  - (f) the Services and the Documentation are provided to the Customer on an "as is" basis.

15.3. Nothing in this Clause 15 or otherwise in this Agreement shall limit liability of either party for death or personal injury resulting from such party's negligence or for fraud or fraudulent misrepresentation.

15.4. Subject to clause 15.2 and clause 15.3:

- (a) Panacea 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 or failure to realise anticipated savings, however arising under this agreement; and
- (b) Panacea's total aggregate liability in contract (including in respect of the indemnity at clause 14.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

## 16. CONTRACT CHANGE PROCEDURE

16.1. Subject to clause 18.5, the Agreement may only be varied by written agreement between each party's Commercial Contact who shall each respond in writing within ten Business Days of receipt of a proposal for a variation from the other.

## 17. SOFTWARE

17.1. Panacea warrants, represents and undertakes that it has obtained all necessary rights, licences and consents from any third parties having any Intellectual Property Rights in the Software which are necessary or appropriate to use the Software in accordance with the performance of this Agreement.

17.2. Neither the Customer nor any Authorised Agent shall itself or by any third party, alter or modify

the whole or any part of the Software nor merge any part of the Software with any other software nor, save to the extent and in the circumstances expressly permitted by law, create derivative works from or reverse engineer or decompile or disassemble the Software or attempt to do any of these things.

Components of the Software may not be separated from the Software and used without the express consent of Panacea.

17.3. Neither the Customer nor any Authorised Agent shall either itself or by a third party alter, obscure, remove, interfere with or add to any trademarks, trade names, markings or names affixed to or contained within the Panacea Software and/or Documentation.

17.4. Neither the Customer nor any Authorised Agent shall use or permit use of the Panacea Software in any manner which in any way prejudices Panacea's legitimate interests or conflicts with the normal exploitation of the Panacea Software by Panacea.

17.5. The Customer shall use reasonable endeavours to procure that each Authorised Agent observes all applicable obligations under this Contract and Panacea shall be relieved of liability to the extent that it is unable to perform its obligations under this Contract as a result of any Authorised Agent failing to observe its obligations and the Customer failing to procure it to do so.

## 18. DATA PROTECTION

18.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 18 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 18, Applicable Laws means (for so long as and to the extent that they apply to Panacea) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.

18.2. The parties acknowledge that for the purposes of the Data Protection Legislation and in relation to the services covered by this Agreement, the Customer is the data controller and Panacea is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

(a) The scope, nature and purpose of processing by Panacea is as defined by the Services to enable the provision, configuration, development, testing and support of the Software;

(b) The duration of the processing is the Initial Subscription Term and any subsequent Subscription Term.

(c) The types of personal data (as defined in the Data Protection Legislation, Personal Data) includes users' contact details and the Customer Data, which is subject to clause 18.3

(d) The categories of Data Subject are as defined by the Customer, subject to clause 18.3

18.3. Without prejudice to the generality of clause 18.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Panacea for the duration and purposes of this agreement.

18.4. Without prejudice to the generality of clause 18.1, Panacea shall, in relation to any Personal Data processed in connection with the performance by Panacea of its obligations under this agreement:

(a) process that Personal Data only on the written instructions of the Customer unless Panacea is required by Applicable Laws to otherwise process that Personal Data. Where Panacea is relying on laws of a

member of the European Union or European Union law as the basis for processing Personal Data, Panacea shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Panacea from so notifying the Customer;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, 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);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

(d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- (i) the Customer or Panacea has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) Panacea complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) Panacea complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, at the Customer's cost, 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;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Laws to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 18

18.5. The Customer hereby grants Panacea general authorisation to appoint third parties as sub-processors of Personal Data under this agreement.

The authorised sub-processors are named in Annex 1. Panacea shall inform the Customer in writing where it intends to add/replace sub-processors to/in Annex 1, providing a draft revised copy of Annex 1 incorporating the intended changes. In the event that the Customer, within 30 days (which the parties agree gives the Customer sufficient time to object to such changes) of Panacea having so informed it: (a) does not give notice in writing to Panacea of any objection to such addition/replacement, such intended changes shall be deemed made to Annex 1 at the end of such 30-day period; or (b) gives notice in writing to Panacea of any objection to such addition/replacement, subject to clause 13.2, the

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parties shall discuss such objection in good faith in order to attempt to resolve it.

18.6. Panacea confirms that it has entered or (as the case may be) will enter into a written agreement with its sub-processors incorporating terms which are substantially similar to those set out in this clause 18.

18.7. Either party may, at any time on not less than 60 days' notice, revise this clause 18 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 this agreement).

## 19. NOTICES

19.1. Notices required under the Agreement to be in writing shall be delivered by hand, post or email to the Commercial Contact of the recipient. Any such notices delivered by email to Panacea should be addressed to [info@panacea-software.com](mailto:info@panacea-software.com). Any such notices delivered by post or by hand to Panacea should be addressed to Panacea's contact address as displayed online via [www.panacea-software.com](http://www.panacea-software.com) or other such web address or means notified by Panacea to the Customer from time to time.

19.2. Any notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

## 20. ASSIGNMENT AND SUB-CONTRACTING

20.1. The Customer shall not, without the prior written consent of Panacea, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement. Any consent, if given, shall not affect Customer's obligations or liabilities under the Agreement.

20.2. Panacea 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 this agreement.

20.3. Except as expressly set out in the Agreement:

(a) no assignment of or agreement under any Intellectual Property Right or trade mark or service mark (whether registered or not) is granted by the agreement; and

(b) no right is conferred on any third party whether under the Agreements (Rights of Third Parties) Act 1999 or otherwise.

## 21. CUSTOMER DATA

21.1. The Customer shall own all right, 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.

21.2. Panacea shall not store, copy, disclose or use Customer Data except as necessary for the performance by Panacea of its obligations under this agreement or as otherwise expressly authorised in writing by the Customer.

21.3. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Panacea to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Panacea.

21.4. If Panacea processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and Panacea shall be a data processor and in any such case:

(a) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the country where the Customer and the Authorised Users are located and within the EEA in order to carry

out the Services and Panacea's other obligations under this agreement;

(b) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to Panacea so that Panacea may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;

(c) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation; and

(d) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

21.5. Panacea shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by the Customer, its Authorised Users or any third party.

21.6. Upon the termination of this Agreement Panacea shall allow the Customer access to the Panacea Software for a period of 10 Business Days for the sole purpose of the retrieval of Customer Data.

## 22. THIRD PARTY PROVIDERS

22.1. The Customer 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 and that it does so solely at its own risk. Panacea makes no representation 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, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed with any third-party or via any third-party website is between the Customer and the relevant third party, and not Panacea. Panacea does not endorse or approve any third-party nor the content of any of the third-party website made available via the Services.

## 23. FORCE MAJEURE

23.1. Panacea shall have no liability to the Customer 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, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Panacea 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 Customer is notified of such an event and its expected duration.

## 24. GENERAL

24.1. No failure or delay by a party to exercise any right or remedy provided under this agreement 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.

24.2. No waiver by either party shall be effective unless made in writing or constitute a waiver of rights in relation to any subsequent breach of the agreement.

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

24.4. If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

24.5. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

24.6. This agreement, and any documents referred to in it, constitute the whole agreement between the parties.

24.7. Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

24.8. Nothing in this agreement 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).

24.9. Subject to clause 18.5, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

24.10. If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

24.11. This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

24.12. This agreement 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.

24.13. 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 this agreement or its subject matter or formation (including non-contractual disputes or claims).

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## Annex 1

### Authorised Sub-processors

<b>Sub-processor</b>	<b>Description of the sub-processing activities</b>
Iomart Managed Services Limited, incorporated in Scotland with company registration number SC275629	Iomart is appointed by Panacea to provide the hosting services required to fulfil the Services.
Bright Interactive Ltd, incorporated in England and Wales with company registration number 03865036	Bright Interactive is appointed by Panacea to provide the integrated cloud software for the management and storage of digital assets for Customers using the Asset Manager module of Panacea Software.
Legalesign Limited, incorporated and registered in Scotland with company registration number SC425013	Legalesign is appointed by Panacea to provide the integrated cloud software for the management and electronic signing of documents for Customers using the eSignature module of Panacea Software.
The Lightyear Corporation Ltd, incorporated and registered in Northern Ireland with company registration number NI648586	Lightyear is appointed by Panacea for the provision of cloud software for data extraction for those Customers who use Panacea's managed invoice bureau to manage supplier invoices sent by email or post.