

GENERAL SUBSCRIPTION TERMS AND CONDITIONS

specifying the terms and conditions for Customer's use of the Software, and Planday's provision of the Software.

1. DEFINITIONS AND INTERPRETATION

1.1 In these General Subscription Terms and Conditions, the following expressions have the following meanings:

"Confidential Information"	means all information that relates to a Party (or any of its businesses) (whether written, verbal or in any other form) and which is accessed or disclosed to the other Party in connection with the Contract, but excluding information that (a) is at the relevant time in the public domain (other than by virtue of a breach of the Contract); (b) was received by the other Party from a third party who did not acquire it in confidence; or (c) is developed by the other Party independently without any breach of the Contract or access to the other Party's Confidential Information.
"Contract"	means the contract which comprises the Order Form, these General Subscription Terms and Conditions and the Data Processing Agreement, as amended in accordance with clause 11.
"Contract Year"	means each successive 12-month period commencing on the Subscription Effective Date.
"Customer"	means the party specified in the Order Form requesting the supply of Software from Planday.

"Customer Data"	means the data (in any form) which is provided to Planday, or uploaded or hosted on any part of the Software by Customer and/or any End User and/or by Planday on Customer's behalf in connection with the use of the Software.
"Data Processing Agreement"	means the data processing agreement concerning Planday's processing of personal data on behalf of Customer forming part of the Contract, including any schedules and/or appendices thereto, the current version of which is available at https://www.planday.com/au/legal/dataprrocessing-agreement/ , and amendments to which will apply in accordance with clause 11.
"End User"	means any natural persons being either (i) employees of Customer, (ii) third party consultants working for Customer at Customer's site, or (iii) users working at Customer's clients, which in each case have been individually created, at the request of the Customer, as users in the Software with individual user ID (e.g. with name and company reference etc.) and authorised by Planday as users of the Software.
"Fees"	means the fees for the Software set out in the Order Form as amended from time to time in accordance with clause 10.4.
"Force Majeure Event"	means circumstances outside of a Party's reasonable control, including but not limited to: <ul style="list-style-type: none"> (a) an act of God (including fire, flood, earthquake, hurricane or similar natural disaster); (b) acts of government, nationwide blockage or embargo, nationalisation or government sanction;

	<p>(c) war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, civil unrest, rebellion, revolution, insurrection, military power or confiscation, or terrorist activities;</p> <p>(d) hacking and denial of service attacks (except where Planday has failed to comply with its security obligations under the Contract);</p> <p>(e) strikes or other labour conflicts; or (f) failures in:</p> <p>(1) computer systems, hardware, power systems or hosting facilities (unless caused by the wrongful act or omission of Planday or its subcontractors);</p> <p>(2) telecommunications or internet service provider.</p>
"General Subscription Terms and Conditions"	means this document specifying the terms and conditions for Customer's use of the Software.
"Intellectual Property Rights" or "IPR"	means any and all patents, trademarks, domain names, trade names, copyright, moral rights, rights in design, rights in databases, rights in designs and rights in inventions, know how and all or other intellectual property rights whether or not registered or capable of registration and subsisting in any part of the world together with all or any goodwill relating to them.
"IP Claim"	an actual claim by a third party against Customer alleging that Customer's use of the Software infringes that third party's Intellectual Property Rights.
"Order Form"	means the form entered into by Planday and Customer or the confirmation mail sent by Planday which sets out the commercial details relating to Customer's use and purchase of the Software.

"Parties"	means Planday and Customer.
"Party"	means Planday or Customer.
"Planday"	means Planday Australia Pty Ltd, a company registered in Australia with Australian Business Number 650 898 187.
"Software"	means the staff roster online applications software named "Planday" and any related software and documentation (as amended and updated from time to time by Planday) provided to Customer by Planday as part of a subscription service as set out in the Contract.
"Subscription Effective Date"	has the meaning given to it in clause 19.1.
"Subscription Period"	has the meaning given to it in clause 19.1(b).
"Term"	means the period from the Subscription Effective Date until the Contract is terminated in accordance with its terms, or, if earlier, expires in accordance with the Order Form.
"Territory"	means the country or countries in which the Customer has the right to use the Software (not including other countries regardless of where Customer and its subsidiaries, affiliates etc. are located) as specified in the Order Form to the extent that such use is not prohibited or restricted by applicable law.
"Unlawful Content"	has the meaning given in clause 16.5.
"Working Day"	means any day other than a Saturday or Sunday or a Public or Bank Holiday in Sydney, Australia.

"Virus"	anything 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 rearranging, 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.

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

- 2.1 The purpose of the Contract is to govern the delivery of the Software by Planday to Customer, and Customer's use of the Software, during the Term. The Contract sets forth the terms and conditions for the licence granted to Customer regarding the use of the Software.

2.2 Expressions such as "including" and similar expressions mean "including, but not limited to".

- 2.3 Words in the singular include the plural and vice versa.

2.4 The headings of the Contract are for guidance only and have no separate legal effect on the understanding or interpretation of the provisions of the Contract.

3. **CUSTOMER LICENCE AND USER RIGHTS**

3.1 Subject to the other terms and conditions of the Contract, Planday grants to Customer a non-exclusive right, without the right to grant sub-licences, to permit the End Users (on a per End User basis and limited to the number of End User licences set out in the Order Form or purchased in accordance with clause 4) to access and use the Software provided to Customer by Planday during the Subscription Period within the Territory solely for Customer's internal business operations. The licence is non-transferable unless otherwise expressly stated in the Order Form (for example, because Customer is allowed to let its clients use the Software).

3.2 Except as permitted by mandatory applicable law which is incapable of exclusion by agreement between the parties, or as expressly authorised by the Contract, Customer may not in any form or by any means (i) copy, make error corrections, or otherwise modify, adapt all or any portion of the Software in any form or media or by any means; (ii) de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or (iii) transfer, assign, store, reproduce, sublicense, publish, rent, lease, distribute, sell, print, display, perform or create derivative works from any part of the Software in any form or media or by any means; or (iv) commercialise the Software, information or products obtained from any part of the Software; or (v) use the Software to provide services to third parties; or (vi) attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under this clause 3; or (vii) introduce or permit the introduction of, any Virus into Planday's network and information systems.

3.3 Customer may not reproduce, distribute, display, sell, publish, broadcast or transfer any information or other material provided by Planday and/or any information or other material provided as a result of the Software (e.g. advisory and security updates), excluding Customer Data, to any third party, including Customer's affiliates or group related entities, nor make such information or material available for any such use.

3.4 Customer may not remove, conceal, or alter any copyright notices contained in the Software, in any information or other material provided by Planday, and/or any information or other material provided as a result of the Software.

3.5 The rights granted under this clause 3 are granted to Customer only and any legal entity that has otherwise been granted an explicit right in the Order Form, and no shared use with any other legal entity (including Customer's affiliates or group related entities) is allowed.

3.6 Customer and any individual End User may not exceed or circumvent the permitted usage as set forth in the Contract.

3.7 Customer undertakes that it will not allow any End User licence to be used by more than one (1) End User, except (i) where such subscription/licence has been reassigned in its entirety to another individual End User in accordance with clauses 4.3 and 4.4, or (ii) where Customer explicitly has been granted an extended licence covering more than one End User and such extended licence is agreed by the Parties in writing.

4. SCALABILITY (CHANGE IN NUMBER OF LICENCES)

4.1 Customer may at any time during any Subscription Period increase its total number of End User licences by purchasing additional End User licences. Such addition will take effect from the date where such additional licences are activated by the Customer. Such additional licences are subject to the Contract unless otherwise agreed between the Parties, and Planday will consequently invoice Customer for the purchase of such additional licences according to the payment terms set forth in clause 10.

4.2 Customer may at any time during any Subscription Period decrease its total number of End User licences provided it does not fall below the minimum billable amount. The minimum billable amount is agreed per the chosen subscription plan in the Order Form. If nothing is agreed in the Order Form then the minimum billable amount is 5 (five) End Users or such other minimum amount per End User as changed by Planday from time to time in accordance with clause 11. Such decrease in the number of End User licences will take effect from the first day of the next Subscription Period.

4.3 During any Subscription Period, Customer is entitled to reassign its End User licences to other End Users provided the requirements set forth in the "End User" definition are adhered to.

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

5. CUSTOMER'S OBLIGATIONS

5.1 Customer shall:

- a. at all times comply with all laws and regulations and any reasonable requirements or instructions that may be given by Planday in relation to the Software;
- b. promptly provide Planday with all information, resources and assistance reasonably requested by Planday in order to allow Planday to perform its obligations under the Contract;
- c. ensure at all times that Planday has access to necessary suitably qualified and experienced Customer representative(s) as reasonably required by Planday in its performance of its obligations under the Contract. The Customer will ensure that such Customer representative(s) will have access to any required information and resources;
- d. ensure that (i) it uses the most current version of its web browser or a version which is not more than two years old in connection with the Software; and/or (ii) that it complies with all other system requirements notified to it by Planday from time to time (changes to which requirements will constitute a change to the Software for the purposes of clause 11.1);
- e. be responsible for obtaining all necessary licences and consents for Planday to use, copy, transmit, store, analyse and back up Customer Data as contemplated by the Contract;
- f. ensure that the End Users use the Software in accordance with the terms and conditions of the Contract, and shall be responsible for any End User's breach of the Contract;

- g. provide a written, up-to-date list of the then-current End Users to Planday promptly on request;
- h. permit Planday at any time to audit the Customer's and End Users' use of the Software in order to verify that the Customer's obligations are being performed in accordance with the Contract as further specified in clause 12;
- i. use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software using the user names and passwords allocated to End Users, and in the event of any such unauthorised access or use, promptly notify Planday;
- j. ensure that each End User shall use a secure password for their use of the Software and that each End User shall keep their password confidential; and
- k. only issue passwords which give administrative access to the Software to appropriate End Users.

5.2 Any delay caused by Customer's failure or delay in performing its obligations under the Contract shall be Customer's responsibility.

6. **SUPPORT**

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

6.2 Customer may access Planday's Help Centre which includes support articles and is available at <https://help.planday.com/en-au/collections/2148797-get-started>

7. **THIRD PARTY PROVIDERS**

7.1 Customer acknowledges that the Software 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. Planday 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 Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between Customer and the relevant third party, and not Planday. Planday recommends that Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Planday does not endorse or approve any third-party website nor the content of any of the third-party websites made available via the Software.

8. INTELLECTUAL PROPERTY RIGHTS

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

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

9. INDEMNIFICATION AGAINST THIRD PARTY CLAIMS

9.1 Planday shall indemnify Customer against all losses, costs (including reasonable legal costs), expenses, demands or liability that the Customer incurs arising out of, or in connection with, an IP Claim.

9.2 Customer shall indemnify Planday against all losses, costs (including legal costs), expenses, demands or liability that Planday incurs arising out of, or in connection with any Customer Data constituting Unlawful Content, including any claim by a third party against Planday that involves an allegation that any Customer Data is Unlawful Content.

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

9.4 Planday's obligations under clause 9.1 shall not apply to the extent that the IP Claim is related to or caused by (i) any modification or alteration of the Software by anyone other than Planday or its subcontractors, (ii) any specifications, software, hardware or services provided by or on behalf of Customer, (iii) any combination of the Software with any hardware, software, services or portion thereof that is not (a) supplied by or on behalf of Planday, or (b) specified by Planday to be used with the Software, or (iv) Customer's use of the Software in a manner not consistent with that specified in the specifications and documentation or otherwise in violation of this Contract.

9.5 If the Software (or any portion thereof), becomes, or Planday believes that it is likely to become, the subject of an IP Claim, Planday shall, at its option and expense, have the right to (i) procure for Customer the right to continue using the Software (or the portion so affected), (ii) modify the Software to avoid the IP Claim, (iii) substitute functionality substantially equivalent to the Software at the time of such substitution, or (iv) terminate the Contract immediately on written notice to Customer and provide to Customer a refund of any prepaid portions of the subscription Fees under this Contract.

9.6 The remedies provided by Planday in this clause 9 are Customer's sole and exclusive remedies in connection with an IP Claim.

10. PRICES AND PAYMENT TERMS

10.1 The Fees to be paid by Customer to Planday for the use of the Software and other deliverables provided by Planday are set out in the Order Form and as amended from time to time in accordance with clause 10.4, which shall be paid in accordance with this clause 10.

10.2 Planday is entitled to invoice Customer in advance for the Fees and any payable sums under the Contract on a monthly, quarterly or yearly basis depending on the chosen plan (or such other time as notified to Customer at least 30 days before taking effect) or as further specified in the Order Form. Planday may issue its first invoice at any time on or following the signing of the Contract. Invoices for all Fees and sums payable under the Contract are (unless otherwise stated in the Order Form) due for payment within thirty (30) days from the date of invoice.

10.3 Unless otherwise stated all Fees and sums payable by the Customer under the Contract are expressed exclusive of GST, which shall also be paid by the Customer at the prevailing rate subject to the provision by Planday of a valid tax invoice.

10.4 Planday will be entitled to increase the Fees at any time by giving at least thirty (30) days' prior written notice to the Customer, provided that such increase shall be limited to no more than one in each calendar year and shall be an amount equal to the greater of:

- a. 5% of the then-current aggregated annual Fees; and
- b. the increase in CPI (as reported by the Australian Bureau of Statistics) during the period from the later of (i) the Subscription Effective Date and (ii) the latest previous price increase.

10.5 The changes in Fees under clause 10.4 will take effect from expiry of the relevant notice period as specified in clause 10.4 (or, if later, the date specified in the notice).

10.6 If, at any time, whilst using the Software, the Customer exceeds the number of permitted End Users that are licensed to use the Software as set out in the Order

Form or purchased in accordance with clause 4 according to the terms and conditions set forth in the Contract, Planday may retroactively charge Customer the additional licence Fees according to clause 12.3.

- 10.7 Any Fees and/or sums not paid by Customer when due shall accrue interest on a daily basis from the due date until paid (whether before or after judgment) at an annual rate equal to the Reserve Bank of Australia cash rate target plus 4%.
- 10.8 In the event that the Customer fails to pay any Fees and/or sums due to Planday on or before its due date for payment, Planday may, without prejudice to any other rights and remedies of Planday and without liability to Customer, suspend performance of its obligations under the Contract by giving the Customer not less than seven (7) days' notice, which may include disabling the Customer's access to the Software, until a reasonable time after full payment is received by Planday.
- 10.9 In the event that the Contract expires or is terminated for any reason, except as otherwise expressly stated in the Contract the Customer will not be entitled to any refund of any Fees or other remuneration paid to Planday, whether or not they are paid in advance.

11. SUSPENSION, MODIFICATION AND OTHER PLANDAY RIGHTS

11.1 Planday may, from time to time, in its sole discretion (i.e. without any consent from the Customer) substitute, change and/or modify the Software, provided that if Planday substantially reduces the functionality of the Software without substitution in a manner that is materially detrimental to the Customer, the Customer may terminate the Contract by giving written notice to Planday within 30 days after such reduction is made. Upon termination of the Contract in accordance with this clause 11.1, Planday shall refund to Customer any Fees it has already paid that relate to the period following the date of termination.

- 11.2 Planday may make changes to the Contract in accordance with clause 11.3.

11.3 Planday shall notify the Customer about any change to the Contract at least thirty (30) days before implementing the change. Such notification may be made within the Software itself, unless Planday acting reasonably considers the change to be substantial in which case it will be made in accordance with clause 22.1.

11.4 If the change is detrimental to the Customer and the Customer objects to the change, the Customer may terminate the Contract by giving written notice of its rejection of the change within fourteen (14) days of being notified of it, and, unless Planday and the Customer agree otherwise, the Contract will terminate when the change is implemented. If the Customer has not given written notice of its rejection of a change within this time, the Customer will be deemed to have accepted it. Upon termination of the Contract in accordance with this clause 11.4, Planday shall refund to Customer any Fees it has already paid that relate to the period following the date of termination.

11.5 Planday is entitled to suspend the provision of the Software (in whole or in part), with immediate effect, without liability, in the following circumstances:

- a. non-payment of Fees by Customer in accordance with clause 10.8;
- b. if required by applicable law or by any applicable governmental or regulatory body;
- c. if the Software or Planday's systems or any part of them is subject to an attack or Virus (including, without limitation, unauthorised access), and Planday believes that such suspension is necessary to assist it respond to the attack or Virus;
- d. if Customer is in material breach of the Contract; or
- e. if there is an event in respect of which Planday reasonably believes that the suspension of the Software is necessary to protect the Software and/or Planday's systems, the Customer and/or Planday's other customers.

Planday will cease such suspension within a reasonable time after the circumstances giving rise to the suspension are resolved.

11.6 Planday may provide information about the Customer's and End Users' use of the Software and access to Customer Data in response to requests from relevant government or regulatory authorities.

12. MONITORING AND AUDIT

12.1 Planday may monitor Customer's (including End Users') usage of the Software in order to verify that Customer's use of the Software is compliant with the Contract and to ensure that Customer is sufficiently licensed.

12.2 Planday may upon reasonable notice (which shall not be less than two (2) Working Days), subject to Customer's reasonable security procedures and during normal business hours, conduct an audit in order to verify that the Contract is being complied with and that Customer is sufficiently licensed.

12.3 If Customer is not sufficiently licensed, then - without prejudice to Planday's other rights and remedies - the Fees payable by Customer for such additional licences shall be calculated for the whole period such licences should have been paid for in accordance with Planday's then-current standard price list and the Customer shall pay to Planday an amount equal to the underpayment within thirty (30) days of the date of the relevant audit. Further, in case an audit reveals that Customer is not sufficiently licensed or has underpaid any Fees, Customer shall pay Planday's reasonable costs incurred in respect of such audit.

13. LIMITATION OF LIABILITY AND DISCLAIMERS

13.1 To the maximum extent permitted by law, the Software is provided “as is” and Planday disclaims all warranties not expressly set out in the Contract, including any implied warranties of non-infringement, merchantability, acceptable quality and fitness for a particular purpose.

13.2 For the avoidance of doubt, Planday does not represent or warrant - and this is acknowledged by Customer - that **(a)** operation of the Software and supply of Software will meet the Customer or End-User’s requirements or shall be uninterrupted or error free, **(b)** that functions contained in the Software will be able to operate in combination with other software and systems used by Customer or meet Customer's requirements; **(c)** the Software is free of Viruses or **(d)** that the information about labour laws and awards within the Software and its functionalities are either fully compliant or always up to date with any labour laws or awards. It is the Customer’s own responsibility to ensure it complies with labour laws and awards and the Customer’s responsibility to verify that the information about labour laws and awards in the Software and its functionalities is correct and applicable to the Customer. It is also the Customer’s responsibility to ensure it reads the Help Centre articles, in-product disclaimers and implements the manual workarounds that are required where some award features cannot be automated. The Contract must also be read in conjunction with the [Product Terms](#) which form part of the General Subscription Terms and Conditions. Further, for the avoidance of doubt, the Planday product does not cover all areas of the relevant award and it is the Customer’s responsibility to read the Product Terms which sets out the award exclusions.

13.3 Nothing in the Contract excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law which contains guarantees that protect the purchasers of goods and services in certain circumstances.

13.4 If any guarantee, warranty, term or condition is implied or imposed in relation to the Contract under the Australian Consumer Law or any other applicable legislation and cannot be excluded (a “**Non-Excludable Provision**”), and Planday is able to limit the Customer’s remedy for a breach of the Non-Excludable Provision, then the liability of Planday for breach of the Non-Excludable Provision is limited to one or more of the following at Planday’s option:

- a. in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or
- b. in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

13.5 Subject to clause 13.4, Planday's liability to Customer under the Contract or in connection with the Software, in contract, tort (including negligence) or otherwise is limited as follows:

- a. Planday shall in no event be liable to the Customer (or any other person or entity) for (i) any indirect, incidental, special, punitive, exemplary, or consequential damages; (ii) loss of revenues, anticipated profits, anticipated savings, goodwill, business opportunities, legal, tax or accounting compliance issues, damage to reputation, damage to and/or loss of data (except to the extent set out in accordance with clause 16), or business interruption (in each case, whether direct or indirect or suffered by End Users); (iii) any loss to the extent caused by an act or omission or a third party (other than Planday's subcontractors); (iv) any errors or omissions in any Customer Data; nor (v) any actions taken by Planday at Customer's direction.
- b. Planday is not responsible for any errors or problems of any nature to the extent arising from the use of the Software not in accordance with the Contract.
- c. The total liability of Planday for all causes of action arising in a Contract year shall be limited to an amount equal to the aggregate annual subscription Fees paid under the Contract by the Customer to Planday in relation to that Contract Year. Until a Contract Year has elapsed, the limitation of liability for that Contract Year shall be calculated as the agreed annual subscription Fees for the Contract Year (based on the agreed number of licences at the start of that Contract Year). This limitation of liability is cumulative and not per incident (i.e. the existence of two or more claims will not enlarge this limit).

13.6 This clause 13 will continue in force after termination of the Contract for whatever reason.

14. **CONFIDENTIALITY**

14.1 The Parties acknowledge and confirm that during the Term of the Contract and forever following its expiry they shall keep Confidential Information of the other Party strictly confidential and secret. Subject to clause 14.3, neither Party may use or disclose to any third party (nor permit its use or disclosure) any Confidential Information of the other Party, unless specifically set forth in the Contract, or use the other's Confidential Information for any purpose other than the implementation of the Contract.

14.2 A Party may disclose Confidential Information if such Party is required by law, by any statutory or regulatory authority, or by a court or other authority of competent jurisdiction to which it is subject, provided that that Party (i) to the extent allowed, promptly notifies the other Party in writing of the full circumstances of the required disclosure, (ii) consults with the other Party as to steps to minimise or avoid the disclosure and takes any such steps reasonably required by that other Party, and (iii) to the extent possible, receives confidentiality undertakings

in a form approved by the other Party from the entity to whom the Confidential Information is disclosed.

14.3 Subject to clause 3.3, each Party is entitled to disclose the other Party's Confidential Information to its employees, consultants, directors, officers, subcontractors or professional advisers. Such information will be disclosed only to parties having a confidentiality agreement with the disclosing Party, under which such information will be kept secret and confidential.

15. USE AS REFERENCE IN PLANDAY MARKETING

15.1 By entering into the Contract, Customer agrees and accepts that Planday will have the right to use Customer's name and logos and the fact that the Customer is a customer of Planday as a reference in brochure or advertising material issued by Planday.

16. CUSTOMER DATA

16.1 Customer shall own all rights, title and interest in and to all of the Customer Data, and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data when it is provided to Planday.

16.2 Customer grants Planday a worldwide, fully-paid up, non-exclusive, non-transferable licence to use, copy, transmit, store, analyse and back up all Customer Data to:

- a. enable Planday to provide the Software;
- b. allow Planday to improve, develop and protect the Software;
- c. create new services and software similar to the Software; and
- d. communicate with Customer about Customer's subscription.

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

16.4 Planday shall however not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (other than Planday's subcontractors).

16.5 Customer represents and undertakes that the Customer Data shall not include any data that is in breach of any applicable laws or that infringes the Intellectual

Property Rights, moral rights, or privacy rights of any person, contains any Virus or is otherwise corrupted, or that is defamatory or obscene ("**Unlawful Content**").

- 16.6 Planday is entitled to cease processing and separate any Customer Data that Planday reasonably suspects is Unlawful Content or that is alleged by a third party to be Unlawful Content and (after having notified the Customer and given the Customer an opportunity to remove the Customer Data), delete such Customer Data.

17. **DATA PROTECTION**

17.1 The Parties acknowledge that Planday may have access to personal data which the Customer and/or End Users have introduced into the Software. Planday's data processing activities are regulated in the separate Data Processing Agreement.

18. **USE OF SUB-CONTRACTORS**

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

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

19. **TERM**

19.1 Unless agreed otherwise in the Order Form and subject to earlier termination under any other provision of the Contract:

- a. the Contract will come into force on the day that the Software is first made available to the Customer (the "**Subscription Effective Date**"); and
- b. the Contract will continue to be in force for successive terms of twelve (12) months each (each a "**Subscription Period**"), unless either party provides written notice at least 30 days before the expiry of a Subscription Period that it does not wish to renew the Contract, in which case the Contract will expire at the end of the then-current Subscription Period.

20. **TERMINATION AND EFFECT OF TERMINATION**

20.1 Customer may terminate the Contract with immediate effect if Planday is in material breach of the Contract and (in the case of a breach capable of being remedied) this has not been remedied within thirty (30) days of a written request to remedy the breach.

- 20.2 Planday may terminate the Contract with immediate effect if:

- a. Customer has failed to pay Fees or any sums due to Planday under the Contract by the due date and this has not been remedied within thirty (30) days of a written request to remedy the failure (whether or not Planday has exercised its right to suspend the Software under clause 11.5(a));
- b. in any circumstances in which Planday has suspended the Software in accordance with the Contract and has not been able to reinstate it within thirty (30) days following the initial suspension having exercised reasonable efforts to do so where appropriate; or
- c. Customer is in material breach of the Contract and (in the case of a breach capable of being remedied) this has not been remedied within thirty (30) days of a written request to remedy the breach.

20.3 On termination of the Contract for any reason:

All licences granted under the Contract will immediately terminate and Customer shall immediately cease all use of the Software; and

Planday will make the Customer Data electronically available in a standard format to be exported by the Customer for a period of fourteen (14) days after expiry or termination of the Contract. If any additional assistance is needed, this will be invoiced according to the then-current time and material rates used by Planday. Planday may permanently delete any Customer Data that remains in its possession for more than one hundred and twenty (120) days following expiry or termination of the Contract. Customer acknowledges that it may be obliged by law to retain certain records (including Customer Data) and is responsible for exporting all Customer Data that it is required to so retain.

20.4 Any expiry or termination of the Contract is without prejudice to any other rights or remedies a Party may be entitled to under the Contract or applicable law. It does not affect any accrued rights or liabilities of either Party nor any provision

which is expressly or by implication intended to come into force on, or continue in force after termination.

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

21. **FORCE MAJEURE**

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

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

21.3 Either Party shall have the right to terminate the Contract forthwith for convenience with thirty (30) days' prior written notice, if the Force Majeure Event exists for a consecutive period of sixty (60) days and prevents Planday from providing the Software or the Customer from using the Software. Upon termination of the Contract in accordance with this clause 21.3 due to a Force Majeure Event that prevents Planday from providing the Software, Planday shall refund to Customer any Fees it has already paid that relate to the period following the date of termination.

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

22. MISCELLANEOUS

22.1 Notices: Any notices shall, unless otherwise expressly stated, be in writing and shall be given by sending an email. For Planday, notices must be sent to the following address: support@planday.com, or any other email address as may be designated in writing from time to time. For Customer, notices shall be sent to the invoice-email address set out on the Order Form. Any notice given by e-mail shall be deemed to have been delivered on the next Working Day following transmission.

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

- a. Order Form and addenda to the Order Form;
- b. any addenda agreed by the parties in writing;
- c. General Subscription Terms and Conditions; and
- d. Data Processing Agreement.

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

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

22.5 Assignment: Customer may not assign, novate, transfer or subcontract any rights or obligations under the Contract without Planday's prior written consent. Planday shall have the right to assign, novate, transfer or subcontract all or any of its rights and obligations under the Contract to any other Xero entity or a purchaser of part

of all of its business upon written notice to the Customer. Xero entities are the companies controlled by or under common control with Xero Limited (a New Zealand company with registration number 1830488). Planday may appoint agents to invoice and receive payment from the Customer under the Contract.

- 22.6 No waiver: Failure by either Party to exercise or enforce any right conferred (which, for the avoidance of doubt, includes without limitation to Planday's right to charge any costs and/or expenses at any time) shall not be deemed to be a waiver of any such right nor operate so as to prevent exercise or enforcement of such right or of any other right on any later occasion.
- 22.7 Changes/amendments: Save as expressly permitted by the Contract, the Contract may only be varied or amended in writing and any such variation or amendment must be signed by a duly authorised representative of each of the Parties.
- 22.8 Entire Contract: The Contract constitutes the entire agreement between the Parties and supersedes any prior agreement or arrangement in respect of its subject matter. Neither Party has entered into the Contract in reliance upon, and it will have no rights in respect of, any misrepresentation, representation or statement (whether made by the other Party or any other person and whether made to the first Party or any other person) which is not expressly set out in the Contract. However, nothing in the Contract limits any liability either Party may have in connection with any representations or other communications (either oral or written) made before or after entering into the Contract, where such liability cannot be excluded by law.
- 22.9 Severability: In the event that any provision of the Contract is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indications of the same are received by either of the Parties
- from any relevant competent authority, then (i) such provision shall be severed from the Contract and the remaining provisions shall remain in full force and effect, and (ii) the Parties shall discuss in good faith with a view to substituting any void and/or unenforceable provision with a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the void and/or unenforceable provision.
- 22.10 Third Party Rights: 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).

23. **GOVERNING LAW AND JURISDICTION**

23.1 Governing law: The validity, interpretation, and performance of this Contract shall be governed by and construed under the laws of New South Wales, Australia.

23.2 Jurisdiction: Each party irrevocably agrees that the courts sitting in New South Wales, Australia shall have non-exclusive jurisdiction to settle any dispute

or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

Version 1.0, April 2023