



## Panda Technology Holdings Limited

### Terms of Service

These Terms of Services ("Terms"), together with any ancillary order from ("Order Form"), set forth the terms and conditions applicable to Customer's access to, purchase of, and use of subscriptions to the Services (as defined below), and form the binding agreement ("Agreement") between Panda Technology Holdings Limited ("Panda", "we" or "our") and the customer set forth on the Order Form ("Customer").

Any references to "we", "us" or "our" or "Panda" shall include, where applicable, our affiliates and subsidiaries.

1. **Panda Services.** Panda operates and maintains the Panda online platform, which provides predictive and proactive mental health support and resources for high performing staff and human resource teams (the "Platform"). The Platform includes a (i) 24/7 live data platform that provides real-time business intelligence on employee mental wellness, team and corporate culture and performance with actionable insights (the "Data Portal"), and (ii) an employee-facing mobile application (the "Mobile App") which includes self-guided content, assessments, live, audio-only, interactive, proactive digital, psycho-educational and support group sessions and other coaching and companionship services generated by artificial intelligence (collectively, the "Services" or "Service").
2. **Acceptance of Terms.**
  - 2.1 Acceptance. Customer accepts these Terms by agreeing to an Order Form that references these Terms or by otherwise using the Services. By entering into these Terms on behalf of Customer's employer, the individual agreeing to these Terms represents that it has the authority to bind such entity and its affiliates to these Terms, in which case the terms "Customer" will refer to such entity and its affiliates. If such an individual does not have such authority, or if it does not agree with these Terms, it must not accept these Terms. Customer acknowledges that these Terms are a contract between Customer and Panda, even though they are electronic and are not physically signed by Customer and Panda, and they govern Customer's use of the Service.
  - 2.2 Modification to Terms. Panda may change these Terms from time to time by providing thirty (30) days prior notice either by emailing the email address associated with Customer's account or by posting a notice on the Services. Customers can review the most current version of these Terms at any time [at <https://www.joinpanda.com/legal/terms>. The revised terms and conditions will become effective thirty (30) days after we post or send Customer notice of such changes, and if Customer uses the Service after that date, Customer's use will constitute acceptance of the revised terms and conditions. If any change to these Terms is not acceptable to Customer, Customer's only remedy is to stop using the Services and send a cancellation email to [legal@joinpanda.com](mailto:legal@joinpanda.com).
  - 2.3 Account Registration. As part of the registration process, Customer will identify users that will have access to the Data Portal ("Account") and Panda will share the registration details to activate the Account.
  - 2.4 Employee User of the Service. Customer's employees must agree to Panda's end user terms of service (the "End User Terms") and acknowledge the Privacy Policy prior to using the Services. Among other things, the End User Terms and Privacy Policy identify the information that Panda collects from each employee, discloses that Panda will only share aggregated information with Customer, and confirms that Panda shall comply with all applicable data protection legislation. Please visit <https://www.joinpanda.com/legal/terms> to review the End User Terms.
3. **General Conditions.**
  - 3.1 Access to the Services. Subject to the terms and conditions of these Terms, Panda hereby grants Customer a non-exclusive, non-transferable, non-assignable limited license to use the Services solely for Customer's own corporate wellness purposes. All rights not expressly granted to Customer are reserved by Panda. Panda

reserves the right to make changes, modifications and enhancements to the Services from time to time. All rights, title and interest in and to the Service and its components will remain with and belong exclusively to Panda. Customer will not (a) sublicense, resell, rent, lease, transfer, assign, time share or otherwise commercially exploit or make the Service available to any third party; (b) use the Services in any unlawful manner (including without limitation in violation of any data, privacy or export control laws) or in any manner that interferes with or disrupts the integrity or performance of the Service or its components, or (c) modify, adapt or hack the Service to, or otherwise attempt to gain unauthorized access to the Services or its related systems or networks. Customer will comply with any codes of conduct, policies or other notices Panda provides Customer or publishes in connection with the Services, and Customer will promptly notify Panda if Customer learns of a security breach related to the Services.

- 3.2 **Monitor and Disable Services.** Panda has the right, but not the obligation, to monitor the Services or content generated by Customer's employees ("Employee Content"). Customer further agrees that Panda may remove or disable any Employee Content at any time for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Employee Content), or for no reason at all.
- 3.3 **Customer Equipment.** Customer will be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, server, software, operating system, networking, web servers, long distance and local telephone service (collectively, "**Equipment**"). Customer will be responsible for ensuring that such Equipment is compatible with the Services and complies with all configurations and specifications set forth in Panda's published policies then in effect. Customer will also be responsible for maintaining the security of the Equipment, Customer's Account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer's Account or the Equipment with or without Customer's knowledge or consent.
- 3.4 **Support.** Subject to the terms hereof, Panda may (but has no obligation to) provide technical support services, through email in accordance with our standard practice. Panda reserves the right to access Customer's account in order to respond to Customer's requests for technical support.
- 3.5 **Modification to Services.** Panda reserves the right to modify or discontinue, temporarily or permanently, the Services (or any part thereof) with or without notice. Customer agrees that Panda will not be liable to Customer or to any third party for any modification, suspension or discontinuance of the Services.
- 3.6 **Service Level Agreement.** Panda shall use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (i) planned maintenance carried out between 22h00 - 02h00; and (ii) unscheduled maintenance performed, subject to reasonable notice being provided to the Customer where such maintenance will affect the supply of the Services.

#### **4. Customer Content.**

- 4.1 **Account Credentials.** Customer is responsible for maintaining the confidentiality of its login, password and account and for all activities that occur under Customer's login or account.
- 4.2 **Security.** Customer understands that the operation of the Services, including Employee Content, may be unencrypted and involve (a) transmissions over various networks; (b) changes to conform and adapt to technical requirements of connecting networks or devices and (c) transmission to Panda's third party vendors and hosting partners to provide the necessary hardware, software, networking, storage, and related technology required to operate and maintain the Service.

#### **5. Privacy and Data Protection.**

- 5.1 **Processing of End-User Personal Information.** Panda acknowledges that Personal Information relating to the End-Users, which is processed by Panda in the execution of these Terms and Conditions, will at all time vest solely with the data subject and the use of the Personal Information by Panda, is limited to the provision of Panda's services to that End-User. The End-User's Personal Information is protected in accordance with

Panda's Terms and Conditions and Privacy Policy, which are both entered into separately and directly between Panda and the End-User.

- 5.2 **Compliance with Law.** Panda hereby warrants in favour of Customer that it (or anyone duly authorized to act on its behalf) shall, in respect of the Personal Information: (i) at all times strictly comply with all laws applicable and relating to the protection or processing of Personal Information or personal data and with all the provisions and requirements of its data protection policies and procedures (including encryption standards) in force, from time to time, and any further requirements of which may be required by legislation, regulation or any relevant industry body, whether within the Republic of South Africa, the United Kingdom, the United States of America or elsewhere in the world; (ii) not, at any time copy, compile, collect, collate, process, mine, store, transfer, alter, delete, interfere with or in any other manner use the Personal Information for any purpose other than delivering the Services, except with the express prior written consent of the disclosing Party or as required or allowed for by law, and then only to the extent necessary to provide the Services in respect of these Terms and Conditions.
- 5.3 **Privacy Policy.** Please visit <https://www.joinpanda.com/legal/privacy> to understand how Panda collects and uses personal information.
6. **Confidentiality.** Each party may have access to the other party's information, which will be deemed confidential information if identified as such by the disclosing party or if the information by its nature is normally and reasonably considered confidential, such as information regarding products, pricing, methodology, research, customers, business partners, business plans and any information which provides a competitive advantage. The receiving party will protect the disclosing party's confidential information with the same degree of care it uses for the receiving party's own confidential information (and at least a reasonable degree of care), will use the information only to carry out this Agreement, and will disclose the information only to the receiving party's employees (or agents bound by similar confidentiality obligations) with a need to know for that purpose. Confidential information will remain the property of the disclosing party and will be destroyed upon request. Information will not be deemed confidential information if it: (a) is disclosed by the disclosing party to others without restriction on use and disclosure; (b) becomes known to the receiving party without restriction from a third party who is not in breach of a confidentiality agreement with the disclosing party; (c) is already known by the receiving party at the time of disclosure; or (d) is independently developed by the receiving party without any reliance on the confidential information of the disclosing party.
7. **Payment.** Customer agrees to pay Panda the amount that is specified in the Order Form in accordance with the terms of such Form and these Terms. Panda shall bill through an invoice, in accordance with the Order Form, in which case, full payment for invoices issued in any given month must be received by Panda thirty (30) days after the mailing date of the invoice, or the Services may be terminated. Unpaid invoices are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection. Customer will be responsible for all taxes associated with Services other than U.S. taxes based on Panda's net income.
8. **Intellectual Property Ownership.**
- 8.1 **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Panda and its licensors reserve all right, title and interest in and to the Services, including any information shared on the Platform and all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein. Customer shall not: (a) permit any third party to access the Services except as permitted hereunder; (b) create derivative works based on the Services; (c) copy, frame or mirror any part or content of the Services; (d) reverse engineer the Services; or (e) access the Services in order to (i) build a competitive product or service or (ii) copy any features, functions or graphics of the Services.
- 8.2 **Feedback.** Customer hereby grants Panda a royalty-free, worldwide, irrevocable, transferable, perpetual license to use and incorporate into the Services or other products or services of Panda any suggestions, enhancement requests, recommendations or other feedback provided by Customer or its employees or agents relating to the Services.
9. **Representations and Warranties.** Customer represents and warrants to Panda that (a) it has full power and authority to enter into these Terms; (b) Customer owns all Customer Content or has obtained all permissions, releases, rights or licenses required to engage in Customer's posting and other activities (and allow Panda to

perform its obligations) in connection with the Services without obtaining any further releases or consents; and (c) Customer Content and other activities in connection with the Service, and Panda's exercise of all rights and license granted by Customer herein, do not and will not violate, infringe, or misappropriate any third party's copyright, trademark, right of privacy or publicity, or other personal or proprietary right, nor does Customer Content contain any matter that is defamatory, obscene, unlawful, threatening, abusive, tortious, offensive or harassing.

10. **Termination.** Panda may terminate these Terms upon thirty (30) days' notice (or ten (10) days in the case of nonpayment), if Customer breaches any of the terms or conditions of these Terms. Panda reserves the right to modify or discontinue, temporarily or permanently, the Service (or any part thereof). All Customer Content on the Service (if any) may be permanently deleted by Panda upon any termination of Customer's account in Panda's sole discretion. However, all accrued rights to payment and the terms of Sections 2.1, 2.5, and 4-17 will survive termination of these Terms.
11. **DISCLAIMER OF WARRANTIES.** The Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Panda or by third-party providers, or because of other causes beyond our reasonable control. HOWEVER, THE SERVICE, INCLUDING THE PRODUCT AND CONTENT, AND ALL SERVER AND NETWORK COMPONENTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND Panda EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. YOU ACKNOWLEDGE THAT Panda DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE OR VIRUS-FREE, NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES, AND NO INFORMATION, ADVICE OR SERVICES OBTAINED BY YOU FROM PANDA OR THROUGH THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS.
12. **Neither Panda Nor the Services Provide Medical Advice.** The Services, and the content therein, such as text, graphics, images, and other materials created by Panda or obtained from Panda's licensors, and other materials contained in the Services are not medical advice and are for informational purposes only. The Services are not intended to be a substitute for professional medical advice, diagnosis, or treatment. Customer and its employees should seek the advice of a psychologist or other qualified health provider with any questions regarding a mental health condition. Neither Customer or its employees should disregard professional medical advice or delay in seeking it because of something read in connection with the Services. Panda does not recommend or endorse any specific tests, psychologists, products, procedures, opinions, or other information that may be mentioned in or through the Services. Reliance on any information provided by Panda, Panda employees, others appearing in connection with the Services, or other users of the Services is solely at their own risk.
13. **Limitation of Liability.** Under no circumstances shall Panda be liable to the Customer, its employees or any third party for any indirect, consequential, incidental, special, or punitive damages, including without limitation, lost profits or lost opportunities, costs of procurement of substitute goods or services, or similar damages, whether in contract, tort, strict liability or otherwise, arising from their use of the Services or for any other claim related in any way to their use of the Services, including, but not limited to, any errors or omissions in any content, or any loss or damage of any kind incurred as a result of the use of the Services or content posted, transmitted, or otherwise made available, save that Panda's liability for any direct losses shall be limited 100% of the fee paid by the client under this agreement within the preceding 12 months.
14. **Indemnification.** Customer will defend, indemnify, and hold harmless Panda and its affiliates from and against any losses, expenses, liability, fines, penalties, proceedings, suits, claims, actions or demands, including reasonable legal and accounting fees, in connection with Customer's breach of these Terms, any actions taken by an employee of the Customer in connection with the Services, bodily injury or death, or Customer's other access, contribution to, use or misuse of the Service. Panda shall provide notice to Customer of any such claim, suit or demand. Panda reserves the right to assume the exclusive defense and control of any matter which is subject to indemnification under this section. In such case, Customer agrees to cooperate with any reasonable requests assisting Panda's defense of such matter.
15. **Dispute Resolution.** In the event of a dispute arising out of the interpretation, application, or termination of this Agreement, the Parties shall engage in good-faith negotiations to achieve a mutually acceptable

resolution. If such negotiations prove unsuccessful, the Parties agree to submit the dispute to arbitration. Arbitration shall be facilitated by a senior attorney or advocate mutually selected by the Parties, who must be a practicing attorney or advocate in the relevant jurisdiction with a standing of not less than 10 (ten) years. If the Parties fail to agree on an arbitrator within 5 (five) working days of the dispute arising, the arbitrator shall be appointed, upon written request from either Party (copied to the other Party), by the director of an accredited dispute resolution service, subject to the condition that the arbitrator appointed meets the criteria specified above. The date(s) of the arbitration shall be determined through mutual agreement. If the Parties cannot agree on the date(s), the arbitrator shall unilaterally decide, upon the written request of either Party (copied to the other Party). The costs associated with the arbitrator, arbitration venue, and recording of proceedings shall be shared equally by the Parties, with each Party bearing its own additional costs. Arbitration proceedings shall adhere to the provisions of the relevant arbitration legislation or rules in force at the time. The decision rendered by the arbitrator will be final and binding on the Parties. The location of the arbitration shall be determined based on what is reasonable at the time the dispute arose, with the Parties or the arbitrator deciding on the most suitable location, unless otherwise agreed in writing by the Parties.

- 16. Governing Law.** Unless agreed otherwise, these Terms and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales. Any dispute or claim arising out of or in connection with these Terms or their formation (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the courts of England and Wales.
- 17. Miscellaneous.** If any provision of these Terms is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that these Terms will otherwise remain in full force and effect and enforceable. The failure of Panda to exercise or enforce any right or provision of these Terms will not be a waiver of that right. Both parties agree that these Terms, together with any Order Form, is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of these Terms, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. Customer may not assign these Terms without the prior written consent of Panda, but Panda may assign or transfer these Terms, in whole or in part, without restriction. No agency, partnership, joint venture, or employment is created as a result of these Terms and Customer does not have any authority of any kind to bind Panda in any respect whatsoever. In any action or proceeding to enforce rights under these Terms, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under these Terms will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.