

TERMS OF SERVICE

Parties

- (1) **FLO BACKOFFICE SOLUTIONS LIMITED** incorporated and registered in England and Wales with company number 08445681 whose registered office is at Suite 2, Stablethorpe Offices, Thorpe Constantine, Tamworth, England, B79 0LH (**FBOS**); and
- (2) **THE USER**, whose contact details have been submitted by The User at **info.flo.co.uk/** requesting access to Flo and by doing so has confirmed acceptance of these Terms of Service

Background

- A. FBOS has developed software applications and platforms which it makes available to customers, through the internet, for the purpose of front and back office services in connection with temporary recruitment.
- B. The User wishes to use FBOS' service.
- C. FBOS has agreed to provide and the User has agreed to take and pay for FBOS' service subject to the terms and conditions of these Terms of Service.
- D. Where these Terms of Service refers to The User we are referring to both you, and any entity or company you represent each as identified by you as The User purchasing our software.

Agreed terms

1. INTERPRETATION

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

User Data: the data inputted by the User, Authorised Users or FBOS on the User's behalf for the purpose of using Flo or facilitating the User's use of Flo.

User Personal Data: any personal data (as defined by UK GDPR) which FBOS processes in connection with these Terms of Service, in the capacity of a processor on behalf of the User.

Applicable Data Protection Laws: the Applicable Law of the United Kingdom. or of a part of the United Kingdom. which relates to the protection of personal data (including UK GDPR).

Applicable Laws: all applicable laws, statutes, regulations and mandatory codes, from time to time in force.

Authorised Users: those employees or customers (including workers and hirers) of the User who are expressly authorised by the User to use Flo and the Documentation, as further described in clause 2.

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

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

Documentation: the document or user guides made available to the User by FBOS online via Flo and at www.flo.co.uk/support/training or such other web address notified by FBOS to the User or in any other form or medium, from time to time, which sets out a description of Flo and the user instructions for Flo.

Effective Date: the date of these Terms of Service.

Fees: the license subscription, installation, training and other fees payable by the User to FBOS for Flo, and the User Subscriptions,.

Flo: the on-line temporary recruitment software system and related services (known as “Flo”) provided by FBOS to the User under these Terms of Service via such web address or URL notified in writing to the User by FBOS from time to time, as more particularly described in the Documentation.

Force Majeure Event: any circumstance not within FBOS’ reasonable control; including, without limitation:

- a) acts of God, flood, drought, earthquake or other natural disaster;
- b) epidemic or pandemic (including Covid-19, and any variation or mutation of Covid-19);
- c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d) nuclear, chemical or biological contamination or sonic boom;

- e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- f) collapse of buildings, fire, explosion or accident;
- g) non-performance by suppliers or subcontractors; and
- h) interruption or failure of utility service.

Free Trial Period: the 30 day period of time during which a single User Subscription for the Software may be offered at no cost for the sole purpose of evaluating the Software with a view to purchasing the Software, as based on the terms specified at the time or as otherwise agreed by the Parties in writing

Initial Subscription Term: 12 months, commencing on the expiration of the Free Trial Period

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

Normal Business Hours: 8.00 am to 6.00 pm local UK time, each Business Day.

Renewal Period: the period described in clause 13.1.

Software: the online software applications provided by FBOS as part of Flo.

Subscription Term: has the meaning given in clause 13.1, being the Initial Subscription Term together with any subsequent Renewal Periods.

Support Services Policy: FBOS' policy for providing support in relation to Flo as made available at flo.co.uk or such other website address as may be notified to the User from time to time.

User Subscriptions: the user subscriptions purchased by the User pursuant to clause 8.1 which entitle Authorised Users to access and use Flo and the Documentation in accordance with these Terms of Service.

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

UK GDPR: has the meaning as supplemented by section 205(4)) of the Data Protection Act 2018.

- 1.2. Clause, schedule and paragraph headings shall not affect the interpretation of these Terms of Service. References to clauses and schedules are to the clauses and schedules of these Terms of Service; references to paragraphs are to paragraphs of the relevant schedule to these Terms of Service.
- 1.3. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's permitted assigns.
- 1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. A reference to a statute or statutory provision is a reference to it as it is in force as at the Effective Date. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of these Terms of Service under that statute or statutory provision.
- 1.8. A reference to writing or written includes e-mail but not faxes.

- 1.9. Any words following the terms including, include or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. USER SUBSCRIPTIONS

- 2.1. Subject to the User purchasing the User Subscriptions in accordance with clause 3.3 and clause 8.1, the restrictions set out in this clause 2 and the other terms and conditions of these Terms of Service; FBOS hereby grants to the User a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use Flo and the Documentation during the Subscription Term, solely for the User's internal business operations.

- 2.2. In relation to the Authorised Users, the User agrees that:

2.2.1. the maximum number of Authorised Users that it authorises to access and use Flo and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;

2.2.2. 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 Flo and/or the Documentation;

2.2.3. each Authorised User shall keep a secure password for their use of Flo and the Documentation that such password shall be regularly changed and that each Authorised User shall keep their password confidential;

2.2.4. it shall maintain a written up to date list of current Authorised Users and provide such list to FBOS within 5 Business Days of FBOS' written request at any time or times;

2.2.5. it shall be responsible for the management of its own Authorised Users and access to Flo, and shall immediately:

2.2.5.1. remove access to any Authorised Users who are no longer employed or engaged by, or contracted to, the User; and

2.2.5.2. notify FBOS if the User becomes aware of any unauthorised access to, or use of or copying of data held in Flo, by any person;

- 2.2.6. it shall permit FBOS or FBOS' designated professional auditor to audit Flo in order to establish the name and password of each Authorised User and the User's data processing facilities to audit compliance with these Terms of Service. Each such audit may be conducted no more than once per quarter (at FBOS' expense) and this right shall be exercised in such a manner as not to substantially interfere with the User's normal conduct of business;
 - 2.2.7. if any of the audits referred to in clause 2.2.6 reveal that any password has been provided to any individual who is not an Authorised User then, without prejudice to FBOS' other rights, the User shall promptly disable such passwords and FBOS shall not issue any new passwords to any such individual; and
 - 2.2.8. if any of the audits referred to in clause 2.2.6 reveal that the User has underpaid Fees to FBOS, then without prejudice to FBOS' other rights, the User shall pay to FBOS an amount equal to such underpayment as calculated in accordance with the prices set out in these Terms of Service within 10 Business Days of the date of the relevant audit.
- 2.3. The User acknowledges and agrees that:
- 2.3.1. Flo is a web-based system which can be accessed from any device which maintains a working internet connection, and the User shall be responsible for ensuring it is able to access Flo as required during the Subscription Term; and
 - 2.3.2. employees, representatives, suppliers and subcontractor of FBOS shall be permitted to access Flo at all times to, as soon as reasonably practicable, identify and fix any issues notified in writing to FBOS by the User, from time to time.
- 2.4. The User shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of Flo that:
- 2.4.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 2.4.2. facilitates illegal activity;
 - 2.4.3. depicts sexually explicit images;
 - 2.4.4. promotes unlawful violence;

- 2.4.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 2.4.6. is otherwise illegal or causes damage or injury to any person or property;
- and FBOS reserves the right, without liability or prejudice to its other rights to the User, to immediately disable the User's access to any material that breaches the provisions of this clause.
- 2.5. The User shall not:
 - 2.5.1. except as may be allowed by any Applicable Law which is incapable of exclusion by Terms of Service between the parties and except to the extent expressly permitted under these Terms of Service:
 - 2.5.1.1. 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
 - 2.5.1.2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - 2.5.2. access all or any part of Flo and the Documentation in order to build a product or service which competes with Flo and/or the Documentation; or
 - 2.5.3. subject to clause 22.1, use Flo and/or the Documentation to provide services to third parties; or
 - 2.5.4. subject to clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make Flo and/or the Documentation available to any third party except the Authorised Users, or
 - 2.5.5. attempt to obtain, or assist third parties in obtaining, access to Flo and/or the Documentation, other than as provided under this clause 2; or
 - 2.5.6. without the prior written consent of FBOS, use Flo other than as expressly set out in these Terms of Service; or
 - 2.5.7. introduce or permit the introduction of, any Virus into FBOS' network and information systems.

- 2.6. The User shall use best endeavours to prevent any unauthorised access to, or use of, Flo and/or the Documentation and, in the event of any such unauthorised access or use, immediately notify FBOS in writing.
- 2.7. The rights provided under this clause 2 are granted to the User only, and shall not be considered granted to any subsidiary or holding company of the User.

3. ADDITIONAL USER SUBSCRIPTIONS

- 3.1. Subject to clause 3.2 and clause 3.3, the User may, from time to time during any Subscription Term, purchase additional User Subscriptions and FBOS shall grant access to Flo and the Documentation to such additional Authorised Users in accordance with the provisions of these Terms of Service.
- 3.2. If the User wishes to purchase additional User Subscriptions, the User shall notify FBOS in writing. FBOS shall evaluate such request for additional User Subscriptions and respond to the User with approval or rejection of the request. Where FBOS approves the request, FBOS shall activate the additional User Subscriptions as soon as reasonably practicable of its approval of the User's request.
- 3.3. If FBOS approves the User's request to purchase additional User Subscriptions, the User shall, within 14 days of the date of FBOS' invoice, pay to FBOS the relevant fees for such additional User Subscriptions and, if such additional User Subscriptions are purchased by the User part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by FBOS for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4. FLO

- 4.1. FBOS shall, during the Subscription Term, provide Flo and make available the Documentation to the User on and subject to the terms of these Terms of Service.
- 4.2. FBOS shall use reasonable endeavours to make Flo available 24 hours a day, seven days a week; except for:
 - 4.2.1. planned maintenance; provided that FBOS has used reasonable endeavours to give the User at least 24 hours' notice in advance; and
 - 4.2.2. unscheduled maintenance performed during Normal Business Hours, provided that FBOS has used reasonable endeavours to give the User at least 2 Normal Business Hours' notice in advance.

- 4.3. FBOS will, as part of Flo and at no additional cost to the User, provide the User with FBOS' standard customer administration support services during Normal Business Hours in accordance with FBOS' Support Services Policy in effect at the time that Flo is provided. FBOS may amend the Support Services Policy in its absolute discretion, from time to time.

5. DATA PROTECTION

- 5.1. For the purposes of this clause 5, the terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the UK GDPR.
- 5.2. Both parties will comply with all applicable requirements of the Applicable Data Protection Laws. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 5.3. The parties have determined that, for the purposes of Applicable Data Protection Laws, FBOS shall process the User Personal Data as processor on behalf of the User. Should the determination in this clause 5.3 change, the parties shall use reasonable endeavours make any changes that are necessary to this clause 5.
- 5.4. Without prejudice to clause 5.2, the User will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the User Personal Data to FBOS for the duration and purposes of these Terms of Service.
- 5.5. In relation to the User Personal Data, Schedule 1 sets out the scope, nature and purpose of processing by FBOS, the duration of the processing and the types of personal data and categories of data subject.
- 5.6. Without prejudice to clause 5.2, FBOS shall, in relation to User Personal Data:
- 5.6.1. process that User Personal Data only on the documented instructions of the User unless FBOS is required by Applicable Laws to otherwise process that User Personal Data. Where FBOS is relying on Applicable Laws as the basis for processing User Personal Data, FBOS shall notify the User of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit FBOS from so notifying the User. FBOS shall inform the User if, in the opinion of FBOS, the instructions of the User infringe Applicable Data Protection Laws;
- 5.6.2. implement the technical and organisational measures to protect against unauthorised or unlawful processing of User Personal Data and against

accidental loss or destruction of, or damage to, User Personal Data, which the User has reviewed and confirms are 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;

- 5.6.3. ensure that any personnel engaged and authorised by FBOS to process User Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
 - 5.6.4. assist the User insofar as this is possible (taking into account the nature of the processing and the information available to FBOS), and at the User's cost and written request, in responding to any request from a data subject and in ensuring the User's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 5.6.5. to the extent permitted by law, notify the User without undue delay on becoming aware of a personal data breach involving the User Personal Data;
 - 5.6.6. delete User Personal Data termination of these Terms of Service unless FBOS is required by Applicable Law to continue to process that User Personal Data. For the purposes of this clause 5.6.6, User Personal Data shall be considered deleted where it is put beyond further use by FBOS; and
 - 5.6.7. maintain records to demonstrate its compliance with this clause 5.
- 5.7. The User provides its prior, general authorisation for FBOS to:
- 5.7.1. appoint processors to process the User Personal Data; provided that FBOS:
 - 5.7.1.1. shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on FBOS in this clause 5;
 - 5.7.1.2. shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of FBOS; and
 - 5.7.1.3. shall inform the User of any intended material changes concerning the addition or replacement of the processors, thereby giving the User the opportunity to object to such changes; provided that if the User

objects to the changes and cannot demonstrate (to FBOS' reasonable satisfaction) that the objection is due to an actual or likely breach of Applicable Data Protection Law, the User shall indemnify FBOS for any losses, damages, costs (including legal fees) and expenses suffered by FBOS in accommodating the objection;

- 5.7.2. transfer User Personal Data outside of the UK; provided that FBOS shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the User shall promptly comply with any reasonable request of FBOS, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where EU Applicable Law which applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).
- 5.8. FBOS may, at any time on not less than 30 days' notice to the User, revise this clause 5 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to these Terms of Service).

6. FBOS' OBLIGATIONS

- 6.1. FBOS undertakes that Flo:
 - 6.1.1. will perform substantially in accordance with the relevant Documentation; and
 - 6.1.2. will be performed with reasonable skill and care.
- 6.2. The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of Flo contrary to FBOS' instructions, or modification or alteration of Flo by any party other than FBOS or FBOS' duly authorised contractors or agents. If Flo does not conform with the foregoing undertaking, FBOS will, at its expense, use reasonable endeavours to correct any such non-conformance promptly, or provide the User with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the User's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1.
- 6.3. FBOS:
 - 6.3.1. shall use reasonable endeavours to provide reasonable user guides to the User on the use of Flo;
 - 6.3.2. does not warrant nor represent that:

- 6.3.2.1. the User's use of Flo will be uninterrupted or error-free; or
- 6.3.2.2. that Flo, the Documentation and/or any information and/or documentation obtained by the User through Flo will meet the User's requirements; or
- 6.3.2.3. the Software or Flo will be free from Viruses;
- 6.3.3. 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 User acknowledges and agrees that Flo and the Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.4. These Terms of Service shall not prevent FBOS from entering into similar Terms of Services with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under these Terms of Service.
- 6.5. FBOS warrants that, so far as it is aware, it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Terms of Service.
- 6.6. FBOS shall follow its archiving procedures for User Data as set out in its Back-Up Policy available at flo.co.uk or such other website address as may be notified to the User from time to time, as such document may be amended by FBOS in its sole discretion from time to time. In the event of any loss or damage to User Data, the User's sole and exclusive remedy against FBOS shall be for FBOS to use reasonable endeavours to restore the lost or damaged User Data from the latest back-up of such User Data maintained by FBOS in accordance with the archiving procedure described in its Back-Up Policy.
- 6.7. FBOS shall not be responsible for any loss, destruction, alteration or disclosure of User Data caused by any third party; except those third parties sub-contracted by FBOS to perform services related to User Data maintenance and back-up for which it shall remain fully liable.

7. USER'S OBLIGATIONS

- 7.1. The User shall:
 - 7.1.1. comply with the User Obligations;

- 7.1.2. provide FBOS with:
- 7.1.2.1. all necessary co-operation in relation to Flo and these Terms of Service;
and
 - 7.1.2.2. all necessary access to such information, documentation and data as
may be required by FBOS from time to time;
- in order to provide Flo (including User Data, and employee, supplier, consultant, customer, payroll and security access information);
- 7.1.3. ensure that all information, documentation and data provided to FBOS (whether or not through Flo) is accurate, relevant and up-to-date and used only for the purposes for which the User gathered such information, documentation and data;
- 7.1.4. without affecting its other obligations under these Terms of Service, comply with all Applicable Laws with respect to its activities under these Terms of Service;
- 7.1.5. carry out all other User responsibilities set out in these Terms of Service in a timely and efficient manner. In the event of any delays in the User's provision of such assistance as agreed by the parties, FBOS may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 7.1.6. ensure that the Authorised Users use Flo and the Documentation in accordance with the terms and conditions of these Terms of Service and any user guide issued by FBOS, from time to time;
- 7.1.7. be responsible for any Authorised User's breach of these Terms of Service;
- 7.1.8. obtain and shall maintain all necessary licences, consents, and permissions necessary for FBOS, its contractors and agents to perform their obligations under these Terms of Service, including without limitation Flo;
- 7.1.9. ensure that its network and systems comply with the relevant specifications provided by FBOS from time to time; and
- 7.1.10. be, to the extent permitted by law and except as otherwise expressly provided in these Terms of Service, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to FBOS' data centres, and all problems, conditions, delays, delivery

failures and all other loss or damage arising from or relating to the User's network connections or telecommunications links or caused by the internet.

- 7.2. The User shall own all right, title and interest in and to all of the User Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such User Data.
- 7.3. If FBOS' performance of its obligations under these Terms of Service is prevented or delayed by any act, breach, delay, failure, or omission of the User, its Authorised Users, agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, FBOS shall be allowed an extension of time to perform its obligations equal to the delay caused by the User.

8. CHARGES AND PAYMENT

- 8.1. On expiry of the Free Trial Period the User shall pay the Fees to FBOS for Flo and the User Subscriptions in accordance with this clause 8.
- 8.2. FBOS shall invoice the User:
- 8.2.1. £45.00 per month per Authorised User set up by the User on Flo;
 - 8.2.2. on the 15th of the month following the expiry of the Free Trial Period for the Fees payable in respect of the following month's access to and use of Flo; and thereafter;
 - 8.2.3. monthly in advance on or before the 15th of each subsequent month for the Fees payable in respect of the following month's access to and use of Flo;
 - 8.2.4. at such other times as the parties may agree, in writing, from time to time for any other Fees or amounts payable by the User in connection with these Terms of Service;

and the User shall pay each invoice within 14 days after the date of such invoice.

- 8.3. If FBOS has not received payment by the due date, and without prejudice to any other rights and remedies of FBOS:
- 8.3.1. FBOS may, without liability to the User, disable the User's password, account and access to all or part of Flo and FBOS shall be under no obligation to provide any or all of Flo while the invoice concerned remain unpaid; and

- 8.3.2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 8.4. All amounts and Fees stated or referred to in these Terms of Service:
- 8.4.1. are, subject to clause 12.4, non-cancellable and non-refundable;
- 8.4.2. are exclusive of value added tax, which shall be added to FBOS' invoice at the appropriate rate.
- 8.5. FBOS shall be entitled to increase the Fees, at the start of each Renewal Period on 30 days' prior notice to the User and the Terms of Service shall be deemed to have been amended accordingly.
- 8.6. FBOS may at any time, without notice to the User, set off any liability of User to FBOS against any liability of FBOS to the User, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under these Terms of Service. Any exercise by FBOS of its rights under this clause 8.6 shall not limit or affect any other rights or remedies available to it under these Terms of Service or otherwise.
- 8.7. All payments made or to be made by the User under these Terms of Service shall be made in full, without any deduction, withholding, set-off or counterclaim on account of any taxes or otherwise.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1. The User acknowledges and agrees that FBOS and/or its licensors own all Intellectual Property Rights in Flo and the Documentation.
- 9.2. Except as expressly stated herein, these Terms of Service does not grant the User any rights to, under or in, any Intellectual Property Rights, or any other rights or licences in respect of Flo and the Documentation.
- 9.3. FBOS confirms that it has all the rights in relation to Flo and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of these Terms of Service.

10. CONFIDENTIALITY

- 10.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under these Terms of Service. A party's Confidential Information shall not be deemed to include information that:
 - 10.1.1. is or becomes publicly known other than through any act or omission of the receiving party;
 - 10.1.2. was in the other party's lawful possession before the disclosure;
 - 10.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 10.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence.
- 10.2. Subject to clause 10.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of these Terms of Service.
- 10.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of these Terms of Service.
- 10.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by Applicable Law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.5. The User acknowledges and agrees that details of Flo, and the results of any performance tests of Flo, constitute FBOS' Confidential Information.
- 10.6. FBOS acknowledges that the User Data is the Confidential Information of the User.
- 10.7. No party shall make, or permit any person to make, any public announcement concerning these Terms of Service without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by Applicable Law, any governmental or regulatory authority (including, without

limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

- 10.8. The above provisions of this clause 10 shall survive termination of these Terms of Service, however arising.

11. INDEMNITY

The User shall indemnify FBOS against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by FBOS arising out of or in connection with:

- 11.1.1. the User 's breach, negligent performance or non-performance of these Terms of Service;
- 11.1.2. the enforcement of these Terms of Service by FBOS;
- 11.1.3. any claim brought against FBOS, its agents, employees, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of these Terms of Service of any information, documentation, data or other materials provided to FBOS by the User in connection with these Terms of Service.

12. LIMITATION OF LIABILITY

- 12.1. Except as expressly and specifically provided in these Terms of Service:
- 12.1.1. the User assumes sole responsibility for results obtained from the use of Flo and the Documentation by the User, and for conclusions drawn from such use. FBOS shall have no liability for any damage caused by errors or omissions in any information, instructions, documentation or scripts provided to FBOS by the User in connection with Flo, or any actions taken by FBOS at the User's direction;
 - 12.1.2. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by Applicable Law, excluded from these Terms of Service; and
 - 12.1.3. Flo and the Documentation are provided to the User on an "as is" basis.

- 12.2. Nothing in these Terms of Service excludes or limits any liability which cannot legally be excluded or limited, including liability for:
- 12.2.1. death or personal injury caused by negligence; or
 - 12.2.2. fraud or fraudulent misrepresentation.
- 12.3. Subject to clause 12.1 and clause 12.2,
- 12.3.1. FBOS shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any:
 - 12.3.1.1. loss of profits;
 - 12.3.1.2. loss of business or contract;
 - 12.3.1.3. loss of anticipated savings;
 - 12.3.1.4. loss of business opportunity;
 - 12.3.1.5. depletion of goodwill and/or similar losses;
 - 12.3.1.6. loss or corruption of data or information;
 - 12.3.1.7. pure economic loss; or
 - 12.3.1.8. special, indirect or consequential loss, costs, damages, charges or expenses however arising under these Terms of Service; and
 - 12.3.2. FBOS' total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms of Service shall be limited to the lower of:
 - 12.3.2.1. total Fees paid during the 12 months immediately preceding the date on which the claim arose;
 - 12.3.2.2. £100,000.
- 12.4. Nothing in these Terms of Service excludes the liability of the User for any breach, infringement or misappropriation of FBOS' Intellectual Property Rights.

13. TERM AND TERMINATION

13.1. These Terms of Service shall, unless otherwise terminated as provided in this clause 13, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, these Terms of Service shall be automatically renewed for successive periods of twelve (12) months (each a **Renewal Period**), unless:

13.1.1. either party notifies the other party of termination, in writing, either within the Free Trial Period, in which case these Terms of Service shall terminate upon the expiry of the Free Trial Period; or

13.1.2. thereafter at least 30 days before the end of the Initial Subscription Term or any Renewal Period, in which case these Terms of Service shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

13.1.3. otherwise terminated in accordance with the provisions of these Terms of Service;

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

13.2. Without affecting any other right or remedy available to it, either party may terminate these Terms of Service with immediate effect by giving written notice to the other party if:

13.2.1. the other party commits a material breach of any term of these Terms of Service and (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;

13.2.2. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

13.2.3. the other party 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;

13.2.4. the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

- 13.2.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of 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;
 - 13.2.6. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
 - 13.2.7. the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
 - 13.2.8. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 13.2.9. 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;
 - 13.2.10. 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 13.2.1 to 13.2.9 (inclusive);
 - 13.2.11. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - 13.2.12. the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of these Terms of Service is in jeopardy.
- 13.3. On termination of these Terms of Service for any reason:
- 13.3.1. all licences granted under these Terms of Service shall immediately terminate, the User will be unable to access Flo and the User shall immediately cease all use of Flo and/or the Documentation;

- 13.3.2. 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;
- 13.3.3. FBOS may destroy or otherwise dispose of any of the User Data in its possession unless FBOS receives, no later than ten days after the Effective Date of the termination of these Terms of Service, a written request for the delivery to the User of a version of the User Data (in a form determined by FBOS and which may be taken from an existing back up version). FBOS shall use reasonable endeavours to deliver such User Data to the User within 30 days of its receipt of such a written request; provided that the User has, at that time, paid all Fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The User shall pay all reasonable expenses incurred by FBOS in returning or disposing of User Data. The User acknowledges and agrees that such User Data shall include core data only, and not ancillary data and notes (as determined by FBOS from time to time); and
- 13.3.4. 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 these Terms of Service which existed at or before the date of termination shall not be affected or prejudiced.

14. FORCE MAJEURE

- 14.1. If FBOS is prevented, hindered or delayed in or from performing any of its obligations under these Terms of Service by a Force Majeure Event, FBOS shall not be in breach of these Terms of Service or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 14.2. FBOS shall:
 - 14.2.1. as soon as reasonably practicable after the start of the Force Majeure Event, notify the User in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under these Terms of Service; and
 - 14.2.2. use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

- 14.3. If the Force Majeure Event prevents, hinders or delays FBOS' performance of its obligations for a continuous period of more than 14 days, FBOS may terminate these Terms of Service by giving 30 days' written notice to the User.

15. NON-SOLICITATION

The User shall not (without the prior written consent of FBOS) at any time during the Subscription Term to the expiry of 12 months after the termination or expiry of these Terms of Service, solicit or entice away from FBOS or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of FBOS in the provision of Flo.

16. CONFLICT

If there is an inconsistency between any of the provisions in the main body of these Terms of Service and the Schedules, the provisions in the main body of these Terms of Service shall prevail.

17. VARIATION

No variation of these Terms of Service shall be effective unless it is in writing and signed by FBOS (or their authorised representative).

18. WAIVER

No failure or delay by a party to exercise any right or remedy provided under these Terms of Service 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.

19. RIGHTS AND REMEDIES

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

20. SEVERANCE

- 20.1. If any provision or part-provision of these Terms of Service is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these Terms of Service.

- 20.2. If any provision or part-provision of these Terms of Service is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. ENTIRE TERMS OF SERVICE

- 21.1. These Terms of Service constitutes the entire Terms of Service between the parties and supersedes and extinguishes all previous Terms of Services, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to Flo.
- 21.2. Each party acknowledges and agrees that in entering into these Terms of Service it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms of Service.
- 21.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in these Terms of Service.
- 21.4. Nothing in this clause shall limit or exclude any liability for fraud.

22. ASSIGNMENT

- 22.1. The User shall not, without the prior written consent of FBOS, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms of Service.
- 22.2. FBOS may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms of Service.

23. NO PARTNERSHIP OR USER

Nothing in these Terms of Service 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. THIRD PARTY RIGHTS

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

25. NOTICES

- 25.1. Any notice required to be given under these Terms of Service shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in these Terms of Service, or such other address as may have been notified by that party for such purposes.
- 25.2. A 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. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).
- 25.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 25.4. For the purposes of this clause 25, "writing" shall not include fax or e-mail.

26. GOVERNING LAW

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

27. JURISDICTION

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

This has been entered into on the date stated at the beginning of it.

SCHEDULE 1

Personal Data Processing Purposes and Details

Subject matter of processing:	Records of individuals who have entered into either a Work Finding Services Agreement or a contract of employment/ contract of service with the User.
Duration of Processing:	<p>Personal Data for an individual will be held for the minimum period defined by the Legislation relevant to the Business Purposes and agreements entered into between the individual and the User.</p> <p>Specific examples would include:</p> <ul style="list-style-type: none"> • Minimum data retention periods specified by Employment Agency Conduct Regulations • Minimum data retention periods specified by HMRC, where the individual has been engaged by the User
Nature of Processing:	The collection, storage and sorting/ searching of an individual's Personal Data for the defined Business Purposes.
Business Purposes:	<p>The provision of Data Processing Services, on behalf of the User, who provides Work Finding Services to individuals who have agreed to enter into an agreement with the User for such services.</p> <p>To meet the legal obligations from Agreements entered into between the Individual and the User such as proof of right to work, payroll processing, working hours monitoring and reporting and where there is a legal obligation on the User to disclose the same.</p>
Personal Data Categories:	<p>Contact and communication information (including address, telephone number, email address)</p> <p>Biographical, education and social information</p>

	<p>Work related information, including employment history, qualifications, work and payroll information</p> <p>Where necessary for the Agreements entered into between individual and User we may process special categories of data about an individual's health, medical conditions or criminal convictions</p>
<p>Data Subject Types:</p>	<p>Information about those that use the User's services or have enquired about their services.</p> <p>Information collected about individuals engaged by the User. This could include financial information and special category data, depending on the information collected.</p>