

## Cappfinity Limited

### Cappfinity Assessments - User Agreement - ATS

Effective from: 1<sup>st</sup> January 2021

#### 1. Introduction

- i. This Site is operated by Cappfinity Limited. Our registered company number is 06802155 and our registered office address is: 2230-2235 Regents Court, The Crescent, Birmingham Business Park, B37 7YE, England.
- ii. This User Agreement (referred to below simply as the 'Terms') explains how You may use this Site.
- iii. Please read these Terms carefully before using the Site. By accessing or using this Site or otherwise indicating your consent, You agree to be bound by these Terms and the documents referred to in them. If You do not agree with or accept any of these Terms, You should cease using the Site immediately.
- iv. If You have any questions about this website, please contact us at [dpo@cappfinity.com](mailto:dpo@cappfinity.com).

#### 2. Definitions

Throughout these Terms, the capitalized words below have the specific meanings listed:

<b>Content</b>	means any text, images, video, audio or other multimedia content, software or other information or material submitted to, subsisting on or accessible from the Site.
<b>Site</b>	The website for the Cappfinity ATS (Application Tracking System) - <a href="https://.*apply.cappats.com">https://.*apply.cappats.com</a> , <a href="https://.admin.cappats.com">https://.admin.cappats.com</a> , <a href="https://.*assess.cappats.com">https://.*assess.cappats.com</a>
<b>We, us or our</b>	means Cappfinity Limited, company registration number 06802155.
<b>User Material Content</b>	Content generated, created, authored or input by You.

<b>You or your</b>	means you, the person accessing or using the Site or its Content and/or inputting/uploading User Material.
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- i. Privacy Policy: these Terms include the provisions of our Privacy Policy which shall be subject to these Terms in the event of any conflict or inconsistency. These Terms may also be supplemented or replaced by additional terms ('Additional Terms') relating to specific Content, or services made available or supplied by us using the Site. Additional Terms will be made available on relevant pages of the Site and will be accessible by You for your acceptance before You enter data or commence an assessment or agree that your personally identifiable data or personal details may be shared with a prospective employer. Additional Terms shall prevail to the extent there is any conflict or inconsistency with any other of these Terms.
- ii. This Site is primarily intended for and directed to Users over the age of 16 years.
- iii. Accessibility: we seek to make this Site as accessible as possible. If You have any problems accessing this Site or the Content contained on it, please contact us at [dpo@cappfinity.com](mailto:dpo@cappfinity.com)

### 3. Code of Conduct

- i. The Site is for your personal and non-commercial use only. As a condition of your use of the Site, You agree to adhere to our Code of Conduct, that is:
  - 1. to obtain and pay for, all telecommunications services, computer equipment and software necessary to connect to and use this Site. We do not provide such services, equipment or software and do not have any control over, or responsibility for, suppliers of such services;
  - 2. not to use the Site for any purpose that is unlawful under applicable law, or prohibited by these Terms;
  - 3. not to defame or disparage anybody or make comments of an obscene, derogatory or offensive manner or otherwise use the Site or its Content in a way that brings us or any third party into disrepute or causes us to be liable to any third party;
  - 4. to use the Site by registering with your legal name, entering only truthful, accurate and complete personal details about yourself, in order to facilitate the accuracy of the match between you as a prospective candidate and any prospective employer;

5. not to use the Site or aide or abet others to use the Site for any fraudulent purpose including (but not limited to) entering false, incomplete or misleading information; allowing or procuring others to complete assessments or input/upload information on Your behalf or in Your name or by completing assessments or inputting or uploading information on behalf of other users;
  6. not to use bots or any other automated process to hack the site or in any other manner reverse engineer, decompile, copy, modify, distribute, transmit, license, sublicense, display, revise, perform, transfer, sell or make available to any third party or otherwise publish, deep-link, create derivative works from or exploit in any way the Site or its Content except as expressly permitted by us under these Terms or as expressly provided under applicable law and/or under any Additional Terms;
  7. not to use the Site to distribute viruses or malware or other similar harmful software code;
  8. not to represent or suggest that we endorse any other business, product or service unless we have separately agreed to do so in writing;
  9. that You are solely responsible for all costs and expenses You may incur in relation to your use of the Site and shall be solely responsible for keeping your password and other account details confidential.
- ii. We provide most of this Site on an open access basis but You may need to register and/or to pay to use some areas. In some cases we may restrict access by age/location of the user at our sole discretion. You represent and warrant that all registration information you provide shall be accurate. You must inform us as soon as you can if it needs updating. It may be necessary for us to refuse some registration applications (e.g. to prevent fraudulent usage). Please read our Privacy Policy which applies to the registration information and data We collect.
  - iii. We may issue you with a username and password and/or other access control for this Site or certain parts of it (together referred to as 'passwords'). These are for your personal use only. You must not tell them to anyone else or allow anyone else to use them. You must not use anyone else's passwords. You must tell us if you think your passwords are no longer

confidential. If you do, or if we believe it is necessary, we may issue You with a replacement password.

- iv. We reserve the right to prevent or suspend your access to the Site if You do not comply with any part of these Terms or any applicable law.
- v. We further reserve the right to take appropriate legal action if You do not comply with any part of these Terms or any applicable law.

#### 4. Submitting information to the Site

- i. This Site is designed to provide personnel assessment processes and procedures to permit employers and prospective employees to engage more efficiently and effectively and enable individuals to develop and enhance their skills. We encourage all users to interact with the Site and submit User Material. In order to ensure that this is done safely and lawfully We have established a set of rules we refer to as our Code of Conduct (set out in clause (3) above). Where our Site enables You to enter User Material and to communicate with Us and/or other users of the Site, You may not use the Site to transmit harmful or offensive (e.g. violent, obscene, discriminatory, defamatory or otherwise illegal) User Material which might otherwise bring us or the Site into disrepute. Although We reserve the right to monitor, edit, review or remove discussions, chats, postings, transmissions, bulletin boards and similar User Material on the Site from time to time, we are under no obligation to do so and assume no responsibility or liability arising from any Content posted on the Site nor for any error, omission, infringement, defamatory statement, obscenity, or inaccuracy contained in any such information.
- ii. You represent and warrant that any User Material You supply to us is and shall be true and accurate to the best of your knowledge information and belief and that creative work is your own original work and has been lawfully provided to us and that You have all necessary consents to provide this to us.
- iii. You acknowledge and agree that any User Material You supply to, or by means of the Site upload to Us, can be used by Us in accordance with our Privacy Policy, including without limitation for purposes of analysis and processing in connection with specific job applications, the provision of feedback and automated advice, research and analysis, recommending the use

of career development techniques and approaches, and liaison with potential employers.

Subject to obtaining your prior express consent, you agree that We may pass on User Material including personal information to specified third parties in connection with Your applications for employment.

## 5. Ownership, use and intellectual property rights

- i. Unless You and We agree otherwise, You will continue to own all copyright in the User Material You submit or upload but the User Material will be subject to the terms of Our Privacy Policy. By submitting your User Material You hereby grant Us a non-exclusive, perpetual, irrevocable, worldwide license of all copyright in the User Material to be held by Us absolutely for the full duration of such rights for use, processing, analysing and holding the User Material as detailed in Our Privacy Policy and with the power to sublicense in accordance with the terms of our Privacy Policy. All other intellectual property rights (and rights of a similar nature) subsisting in the User Material shall belong to Us absolutely.
- ii. This Site (including, without limitation, all Content on this Site but excluding your User Material) is protected by intellectual property rights which are owned by Us and/or Our licensors. We and Our licensors reserve all Our intellectual property rights (which include without limitation all copyright, trade marks, domain names, design rights, database rights, patents and all other intellectual property rights of any kind) whether registered or unregistered anywhere in the world.
- iii. Nothing in these Terms grants You any rights in the Site or its Content other than as necessary to enable You to access the Site. You agree not to copy or otherwise seek to reproduce information or data included on the Site or forming part of the Content or to adjust or to try to circumvent or delete any intellectual property notices or any anti-copying device contained on the Site and in particular in any digital rights or other security technology embedded or contained within any Site Content.

## 6. The Roles of Data Controller and Data Processor

- i. Depending on the type of assessment which You complete, and the process by which You are completing this assessment, We may be acting as the Data Controller or the Data Processor in

relation to any data that you provide. Typically, we will be acting as the Data Controller if You have independently chosen to complete an assessment with Us. Typically, we will be acting as the Data Processor if You are completing an assessment as part of a recruitment and selection process which is being delivered by Cappfinity on behalf of a third party client.

- ii. If We are acting as the Data Processor, We will be following the specific instructions provided to us by the Data Controller in respect of how We process and manage Your data.

## 7. Software

- i. Where any software is made available for downloading from the Site, this is our copyrighted work and/or that of our licensors. You may only use such software in accordance with the Terms of the end user licence agreement, if any, which accompanies the software and, subject thereto, in accordance with these Terms. All such software is made available for downloading solely for your personal use in a non-commercial manner. Any reproduction or redistribution of software not in accordance with the end user licence agreement and/or these terms is expressly prohibited, and may result in severe civil and criminal penalties.
- ii. Our software is warranted only to the extent expressly required by English law or according to the terms of the end user licence agreement. We hereby disclaim all other warranties, conditions and other terms (whether express or implied) with regard to the software, including all implied warranties and conditions of satisfactory quality, freedom from defects and fitness for a particular purpose. In no event shall our aggregate liability in respect of any such software exceed the limitations of liability in the applicable end user licence agreement, or in all other cases the amount you paid us for the relevant software.

## 8. Accuracy of information and availability of the Site

- i. While We use reasonable efforts to include accurate and up-to-date information on the Site, We do not represent, warrant or promise (whether expressly or by implication) that any Content is or remains available, accurate, complete and up to date, free from bugs, errors or omissions or fit or suitable for any purpose. Any reliance You may place on the information on this Site is at your own risk and We may suspend or terminate operation of the Site at any time at our sole

discretion. Nothing in these Terms shall operate to prejudice any mandatory statutory requirement or your statutory rights. Content on the Site is provided for your general information purposes only and to inform you about us and our products and news, features, services and other websites, which may be of interest. It does not constitute technical, financial or legal advice or any other type of advice and should not be relied on for any purposes.

- ii. While We make commercially reasonable efforts to ensure that the Site is available, We do not represent, warrant or guarantee in any way the Site's continued availability at all times or uninterrupted use by you of the Site.

## 9. Hyperlinks and third party sites

- i. The Site may contain hyperlinks or references to third party websites other than the Site. Any such hyperlinks or references are provided for your convenience only. We have no control over third party websites and accept no responsibility for any content, material or information contained in them. The display of any hyperlink and reference to any third party website does not constitute an endorsement of such third party's website, products or services. Your use of a third party site may be governed by the terms and conditions of that third party site.

## 10. Warranties and limitation of liability

- i. You agree that your use of the Site is on an 'as available' basis. As stated above, except as otherwise expressly required by applicable law, we make no representations, warranties, conditions or other terms (whether express or implied) in relation to the provision of the Site, including without limitation as to completeness, accuracy and currency or any Content on the Site, or as to satisfactory quality, or fitness for particular purpose.
- ii. To the maximum extent permitted by applicable law, we exclude all liability (whether arising in contract, tort, breach of statutory duty or otherwise) which we may otherwise have to you as a result of any error or inaccuracies in any Content, the unavailability of the Site for whatsoever reason, and any representation or statement made on the Site.
- iii. We will not be liable for any loss or damage we cause which we could not reasonably anticipate when you started using the Site, for example if you lose revenue, salary, profits or reputation as

a result of your use of the Site and/or the acts or omissions of any third party such as other users of the Site or any other indirect or consequential loss or damage you may incur in relation to the Site and its Content.

- iv. Under no circumstances shall our aggregate liability to you for any and all claims arising from your use of the Site (including the downloading or use of any Content) exceed the amounts paid by you to us in relation to your use of the Site or its Content.
- v. Notwithstanding any other provision of these Terms, we do not exclude or limit our liability for death or personal injury arising from our negligence, for any fraudulent misrepresentation made by us on the Site or for any other statutory rights which are not capable of being excluded.
- vi. Any exclusions and limitations of liability in these Terms shall be subject to the Additional Terms in respect of matters covered by those Additional Terms and as otherwise required by law.

## 11. General

- i. These terms are dated 5 November 2019. No changes to these Terms are valid or have any effect unless agreed by Us in writing. We reserve the right to vary these Terms from time to time. Our new Terms will be displayed on the Site and by continuing to use and access the Site following such changes, You agree to be bound by any variation made by us. It is your responsibility to check these terms and conditions from time to time to verify such variations.
- ii. Unless otherwise expressly stated in these Terms, all notices from You to us must be in writing and sent to our contact address at Cappfinity Ltd, 2230-2235 Regents Court, The Crescent, Birmingham Business Park, B37 7YE, England and all notices from us to You will be displayed on our website from time to time.
- iii. We shall have no liability to you for any breach of these terms caused by any event or circumstance beyond our reasonable control including, without limitation, strikes, lock-outs and other industrial disputes, breakdown of systems or network access, flood, fire, explosion or accident.



- iv. If any part of these Terms is unenforceable (including any provision in which we exclude or limit our liability to you) the enforceability of any other part of these terms and conditions will not be affected. If we choose not to enforce any right that we have against You at any time, then this does not prevent us from later deciding to exercise or enforce that right.
- v. Except for our affiliates, directors, employees or representatives, a person who is not a party to this agreement has no right under the United Kingdom Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement but this does not affect any right or remedy of a third party that exists or is available apart from that Act.
- vi. These Terms (together with the Privacy Policy and any applicable Additional Terms) contain the entire understanding and agreement between us and You in relation to your use of the Site and supersede and replace any representation, statement or other communication (whether written or otherwise) made by You or us which is not contained herein. Save for fraud or fraudulent misrepresentation, We shall have no liability for any such representation being untrue or misleading.
- vii. You may not assign, sub-license or otherwise transfer any of your rights and obligations in these terms to any other person.
- viii. These Terms are governed by the law of England and any dispute as to the meaning or the enforcement of this agreement shall be subject to the exclusive jurisdiction of the English courts.
- ix. **IF YOU DO NOT COMPLY WITH THESE TERMS YOU MAY BECOME LEGALLY LIABLE TO US OR TO THIRD PARTIES OR YOU MAY OTHERWISE BE ACTING UNLAWFULLY.** If anything is not clear to you, or if you think that any other User Material or Content included on the Site is in breach of these Terms please contact us at [dpo@cappfinity.com](mailto:dpo@cappfinity.com)