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# TERMS AND CONDITIONS

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Between:

- (1) **CUBE HR CONSULTANCY LTD** registered in England and Wales with company number 10921805, registered office Charter House, 18-20 Finsley Gate, Burnley, Lancashire BB11 2HA (the Service Provider); and
- (2) You, the Customer

## 1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

### 1.1 Definitions:

- Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- Charges:** the charges payable by the Customer for the supply of the Services in accordance with Clause 5.
- Commencement Date:** has the meaning given in Clause 2.2.
- Conditions:** these terms and conditions as amended from time to time in accordance with Clause 11.5.
- Contract:** the contract between the Service Provider and the Customer for the supply of Services in accordance with these Conditions.
- Customer:** the person or firm who purchases Services from the Service Provider.
- Customer Default:** has the meaning set out in Clause 4.2.
- Data Protection Legislation:** the UK Data Protection Legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
- Instructions:** the Customer's written acceptance of the Service Provider's quotation.
- Intellectual Property Rights:** copyright and related rights, trademarks and service marks, business names and domain names, goodwill and the right to sue for passing off, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), materials provided by the Service Provider including the Service Provider Materials, 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.

**Services:** the services supplied by the Service Provider to the Customer.

**Service Provider:** Cube HR Consultancy Ltd registered in England and Wales with company number 10921805, at registered office Charter House, 18-20 Finsley Gate, Burnley, Lancashire BB11 2HA.

**Specification:** the description or specification of the Services provided by the Service Provider to the Customer and to be set out in an agreement between the parties.

**Service Provider Materials:** has the meaning set out in Clause 4.1(h).

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK.

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (b) Any words following the terms **including, include, in particular, for example** 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.
- (c) A reference to **writing** or **written** includes email.

## 2. BASIS OF CONTRACT

- 2.1 The Instructions constitute an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 Upon the Parties signing these Conditions the parties are deemed to accept the terms herein, at which point, and on which date the Contract shall come into existence (Commencement Date).
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.4 Any quotation given by the Service Provider shall not constitute an offer and is only valid for a period of 14 Business Days from its date of issue.

## 3. SUPPLY OF SERVICES

- 3.1 The Service Provider shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Service Provider shall use all reasonable endeavours to meet any performance timeframes specified, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Service Provider reserves the right to amend the Specification if necessary to comply with

any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Service Provider shall notify the Customer in any such event.

- 3.4 The Service Provider warrants to the Customer that the Services will be provided using reasonable care and skill.

#### **4. CUSTOMER'S OBLIGATIONS**

4.1 The Customer shall:

- (d) ensure that the terms of the Instructions and any information it provided in the Specification are complete and accurate;
- (e) co-operate with the Service Provider in all matters relating to the Services;
- (f) provide the Service Provider, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Service Provider;
- (g) provide the Service Provider with such information and materials, staff and personnel as the Service Provider may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (h) comply with all applicable laws, including health and safety laws;
- (i) keep all materials, including training materials, documents and other property of the Service Provider (Service Provider Materials) at the Customer's premises in safe custody at its own risk, maintain the Service Provider Materials in good condition until returned to the Service Provider, and not dispose of or use the Service Provider Materials other than in accordance with the Service Provider's written instructions or authorisation;
- (j) comply with any additional obligations as set out in the Specification; and
- (k) provide payment to the Service Provider for the Services as set out in Clause 5.

4.2 If the Service Provider's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- (a) without limiting or affecting any other right or remedy available to it, the Service Provider shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Service Provider's performance of any of its obligations;
- (b) the Service Provider shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Service Provider's failure or delay to perform any of its obligations as set out in this Clause 4.2; and
- (c) the Customer shall reimburse the Service Provider on written demand for any costs or

losses sustained or incurred by the Service Provider arising directly or indirectly from the Customer Default.

## 5. CHARGES AND PAYMENT

For matters proceeding on a continuous basis:

- 5.1 An agreed monthly fee is payable.
- 5.2 Where additional work or services, beyond the scope of these Terms and as detailed in the Specification, is conducted by the Service Provider, the Service Provider may charge the Customer fees additional to those as set out in Clause 5.1.
- 5.3 Where such additional fees arise:
  - (a) the Service Provider shall inform the Customer as soon as it becomes aware that additional fees will be charged;
  - (b) where additional fees are calculated on a time spent basis, the Service Provider's daily fee rates for each individual are calculated on the basis of a seven-hour day from worked on Business Days;
  - (c) the Service Provider shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Service Provider engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Service Provider for the performance of the Services, and for the cost of any materials.
- 5.4 The Service Provider reserves the right to increase the Charges on an annual basis.
- 5.5 The Service Provider shall invoice the Customer on the 1<sup>st</sup> day of each month.
- 5.6 The Customer shall pay each invoice submitted by the Service Provider:
  - (a) no later than the 30<sup>th</sup> of the month in which the invoice was provided to the Customer; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Service Provider, and time for payment shall be of the essence of the Contract.
- 5.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Service Provider to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Service Provider, pay to the Service Provider such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.8 If the Customer fails to make a payment due to the Service Provider under the Contract by the due date, then, without limiting the Service Provider's remedies under Clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 5.8 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period

when that base rate is below 0%. In addition, the Customer shall pay late payment fees to be charged at the maximum permitted under the Late Payment Directive at the time of the dispute, and any recovery costs incurred.

Where services are provided on an ad hoc basis:

- 5.9 The Service Provider shall invoice the Customer as agreed, said invoices to be provided either upon completion of the instructions, on a monthly basis or upon completion of each stage of the Services to be provided
- 5.10 The Customer shall pay each invoice submitted by the Service Provider:
- (a) within 30 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Service Provider, and time for payment shall be of the essence of the Contract.
- 5.11 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Service Provider to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Service Provider, pay to the Service Provider such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.12 If the Customer fails to make a payment due to the Service Provider under the Contract by the due date, then, without limiting the Service Provider's remedies under Clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 5.4 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%. In addition, the Customer shall pay late payment fees to be charged at the maximum permitted under the Late Payment Directive at the time of the dispute, and any recovery costs incurred.
- 5.13 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.14 Fees are calculated on a time spent basis, the Service Provider's daily fee rates for each individual are calculated on the basis of a seven-hour day from worked on Business Days.
- 5.15 The Service Provider shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Service Provider engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Service Provider for the performance of the Services, and for the cost of any materials.
- 5.16 The Service Provider reserves the right to increase the Charges on an annual basis.

## **6. INTELLECTUAL PROPERTY RIGHTS**

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Service Provider.

- 6.2 The Service Provider grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to use the Service Provider Materials (excluding materials provided by the Customer) for the purpose of receiving and using the Services.
- 6.3 The Customer shall not copy, otherwise reproduce, distribute or amend the Service Provider Materials.
- 6.4 The Customer shall not sub-license, assign or otherwise transfer the rights granted in Clause 6.2.
- 6.5 The Customer grants the Service Provider a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Service Provider for the term of the Contract for the purpose of providing the Services to the Customer.

## **7. DATA PROTECTION**

- 7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation.
- 7.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Service Provider is the processor.
- 7.3 The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Service Provider for the duration and purposes of the Contract.

## **8. LIMITATION OF LIABILITY**

The customer's attention is particularly drawn to this clause.

- 8.1 The Service Provider has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £1,000,000.00 per claim. The limits and exclusions in this clause reflect the insurance cover the Service Provider has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 8.2 The restrictions on liability in this Clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 8.4 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; and
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

- 8.5 Subject to Clause 8.4, the Service Provider's total liability to the Customer shall not exceed a sum to be agreed upon by the parties.
- 8.6 This Clause 8.6 sets out specific heads of excluded loss and exceptions from them:
- (a) Subject to Clause 8.4, the types of loss listed in Clause 8.9(b) are wholly excluded by the parties.
  - (b) The following types of loss are wholly excluded:
    - (i) loss of profits
    - (ii) loss of sales or business
    - (iii) loss of agreements or contracts
    - (iv) loss of anticipated savings
    - (v) loss of use or corruption of software, data or information
    - (vi) loss of or damage to goodwill; and
    - (vii) indirect or consequential loss.
- 8.7 The Service Provider has given commitments as to compliance of the Services with relevant specifications in Clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.8 Unless the Customer notifies the Service Provider that it intends to make a claim in respect of an event within the notice period, the Service Provider shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 8.9 This Clause 8 shall survive termination of the Contract.

## **9. TERMINATION**

- 9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 1 months' written notice.
- 9.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of

the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business [or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.3 Without affecting any other right or remedy available to it, the Service Provider may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment; or

9.4 Without affecting any other right or remedy available to it, the Service Provider may suspend the supply of Services under the Contract or any other contract between the Customer and the Service Provider if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in Clause 9.2(b) to Clause 9.2(d), or the Service Provider reasonably believes that the Customer is about to become subject to any of them.

## **10. CONSEQUENCES OF TERMINATION**

10.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Service Provider all of the Service Provider's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Service Provider shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Service Provider Materials which have not been fully paid for. If the Customer fails to do so, then the Service Provider may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination [or expiry].

10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **11. GENERAL**

11.1 Force majeure.

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to



perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

#### 11.2 Assignment and other dealings.

- (a) The Service Provider may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Service Provider.

#### 11.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or Service Providers of the other party, except as permitted by Clause 11.3(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 11.3; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

#### 11.4 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract 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 the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

#### 11.5 Variation.

Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### 11.6 Waiver.

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

#### 11.7 Severance.

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 11.7 shall not affect the validity and enforceability of the rest of the Contract.

#### 11.8 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be sent by email to the address specified by the Service Provider.
- (b) Any notice shall be deemed to have been received at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 11.8(b), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This Clause 11.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

#### 11.9 Third party rights.

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

#### 11.10 Governing law.

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

#### 11.11 Jurisdiction.

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