

TERMS AND CONDITIONS

Definitions referred to in these terms and conditions are references to defined terms in the Investment Proposal and Key Terms document unless specified otherwise.

1 Commencement and Duration

- 1.1 The Agreement shall commence on the Agreement Start Date and shall continue for the Term, unless terminated in accordance with the provisions of clause 12.

2 User Subscriptions

- 2.1 Subject to the Customer paying the Charges, and complying with the terms of the Agreement, VF grants to the Customer a non-exclusive, non-transferrable right and licence to permit the Authorised Users to use the Services during the Term.
- 2.2 The Customer shall not License, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or documentation supplied to the Customer available to any third party except the Authorised Users.
- 2.3 The rights under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
- 2.4 The Customer agrees to use the Services in accordance with VF's Terms of Use (see clause 13 for definition). The Terms of Use are deemed to be incorporated into the Agreement. In the event of a conflict between VF's Terms of Use and this Agreement, this Agreement shall govern.

3 Services

- 3.1 VF will, as part of the Services and at no additional cost to the Customer provide the Customer with Maintenance and Support during Normal Business Hours.
- 3.2 No warranties or representations are made or given by VF to the Customer or the Candidates that: (a) The Customer's and Candidates' use of the Services will be uninterrupted or error-free; (b) The Services, and/or the information obtained by the Customer or its Candidates through the use of the Services will meet their requirements; and (c) The Customer and/or Candidates' IT system and infrastructure is suitable and fit for use and has the required capability for the use of the Services.

4 Customer data and report generation

- 4.1 The Customer shall have sole responsibility (and VF shall have no liability whatsoever or howsoever arising), for the legality, reliability, integrity, accuracy and quality of all such Customer Data and Report Data.

5 Obligations

- 5.1 VF undertakes that the Services will be performed with reasonable skill and care. This undertaking shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to VF's instructions, or modification or alteration of the Services by any party other than VF or VF's duly authorised contractors or agents.
- 5.2 The Customer undertakes and agrees to:
 - (a) provide VF with:
 - (i) All necessary co-operation in relation to the Agreement; and

- (ii) All necessary access to such information as may be required by VF in order to facilitate the use of the Services.

5.3 Both parties shall:

- (a) Comply with all Applicable Laws and the terms of the Agreement in a timely and efficient manner;
- (b) Obtain and shall maintain all necessary licences, consents, and permissions necessary for each party, its contractors and agents to perform their obligations under the Agreement; and
- (c) Be responsible for and ensure that its network and systems comply with the relevant specifications provided by VF from time to time and function efficiently in accordance with such specifications.

6 Charges

- 6.1 The Customer shall pay the Charges to VF in accordance with the Agreement and in particular, the provisions of this clause 6.
- 6.2 VF may raise additional Charges if the Customer requests Services in addition to those agreed as at the Subscription Start Date. VF shall be under no obligation to provide additional resources and Customer shall be under no obligation to purchase additional Services (or pay the additional sum for these) except as agreed in writing between the parties.
- 6.3 If VF does not receive payment on or before the invoice due dates, and without prejudice to any other rights and remedies of the VF:
- (a) VF may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and VF shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) Interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of VF's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 6.4 The Supplier reserves the right to increase the Charges on each anniversary of the subscription start date by an amount representing the then current rate of RPI.

7 Intellectual Property Rights

- 7.1 The Customer acknowledges and agrees that VF and/or its licensors own all VF IPR. Except as expressly stated herein, the Agreement does not grant the Customer any rights to or licences over any VF IPR in respect of the Services. The Customer shall not use the VF IPR except with the prior written consent of VF.
- 7.2 VF acknowledges and agrees that the Customer owns all of the Customer IPR and except as expressly stated herein, the Agreement does not grant VF any rights to or license over any Customer IPR. VF shall not use the Customer IPR except with the prior written consent of the Customer. Other than the licence expressly granted under the Agreement, neither party grants any licence of, right in or makes any assignment of any of its Intellectual Property Rights.

- 7.3 The Customer shall promptly give notice in writing to VF in the event that it becomes aware of any infringement or suspected infringement of the VF IPR or the Services and:
- (a) At the request of VF, the Customer shall do or procure to be done (at VF's reasonable cost) all such further acts and things (including the execution of documents) as VF shall reasonably require to give VF the full benefit of the VF IPR.
- 7.4 With the Customer's prior written approval, VF may from time to time use the Customer's logo or website (and is hereby granted a licence to do so) or make reference to the Customer's use of the Services in general marketing, order announcements, case studies and PR materials.

7 Recruitment Services

- 7 If VF supplies Recruitment Services for the Customer's benefit at any stage during the Term, it will do so as an employment agency within the mean of the Employment Agencies Act 1973. The Customer will provide all such information and co-operation to VF to enable VF to provide the Recruitment Services. VF will not be obliged to advertise or promote any vacancy unless the Customer provides all information requested by VF and:
- (a) VF will use reasonable endeavours to assess a Candidates suitability for the role offered by the Customer, however, the Customer must ensure that the Candidate is suitable for the role and will be responsible for taking up references.
- (b) VF will only advertise vacancies in Great Britain unless VF expressly agrees in writing.
- (c) Where VF supplies Recruitment Services, VF reserves the right to use Candidate Data where the Customer has decided that Candidate or Candidates is/ are not suitable for an Engagement. Otherwise the Customer Data belongs to the Customer.

8 Confidentiality

- 8.1 Each party may be given access to Confidential Information from the other party to perform its obligations under the Agreement.
- 8.2 Subject to clause 8.3, 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 the Agreement.
- 8.3 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by 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 8.3, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 8.4 The above provisions of this clause 8 shall survive termination of the Agreement, however arising.

9 Anti-Bribery and Data Protection

- 9.1 The parties shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (as amended) and Data Protection Legislation.

- 9.2 Breach of this clause 9 shall be deemed to be a material breach which is irremediable.
- 9.3 The Customer shall enter into a DPA with VF to agree the terms on which to share Personal Data. The terms of which will be agreed between both parties.

10 Indemnity

- 10.1 The Customer shall defend, indemnify and hold harmless VF against all and any liability, claims, actions, proceedings, losses, damages, fines, penalties, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with:
- (a) The Customer's use of the Services (including any reckless act, omission or default on the part of the Customer or its employees, agents or contractors);
 - (b) A breach by it, its employees, agents and contractors of the VF IPR;
 - (c) Any breaches of clauses 7 and 9, by it, its employees, agents and contractors;
 - (d) Any breaches of its obligations under the DPA; or
 - (e) Any Processing (as defined in the Data Protection Legislation) of Personal Data carried out by VF in accordance with the instructions of the Customer that infringes any Applicable Laws.
- 10.2 Limits as set out in clause 11.3(b) shall apply.

11 Limitation of liability

- 11.1 Except as expressly and specifically provided in the Agreement: (a) The Services are provided on an "as is" basis and the Customer assumes sole responsibility and any liability for results obtained from the use of the Services and for conclusions drawn from such use to the fullest extent permitted by law; and (b) VF shall not be liable for services provided by third parties, including without limitation in relation to the compliance and security measures used by Microsoft or Facebook.
- 11.2 Nothing in the Agreement limits or excludes the liability of either Parties: (a) For death or personal injury caused by either Parties negligence; (b) For fraud or fraudulent misrepresentation; or (c) Any liability which cannot be limited or excluded as a matter of law.
- 11.3 Subject to clause 11.2:
- (a) Neither Party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Agreement; and
 - (b) Either Party's 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 the Agreement shall be as follows:

Data protection breaches/ loss, corruption or destruction of data: £500,000
Liability in respect of the provision of Recruitment Services: The amount of the charges paid to Vacancy Filler Limited in respect of those recruitment services provided to the Customer.
Liability in all other cases save where liability cannot be excluded or limited: The amount paid to Vacancy Filler Limited for the Services.

12 Term and termination

- 12.1 The Agreement shall, unless otherwise terminated as provided in this clause 12, commence on the Agreement Start Date and shall automatically terminate at the end of the Term, unless the parties otherwise agree in writing.
- 12.2 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- (a) The other party commits a material breach of any other term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so. Non-payment of the Charges when they fall due shall be material breach;
 - (b) The other party repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;
 - (c) 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; or
 - (d) On the happening of any other insolvency related event.
- 12.3 The Supplier may terminate the Contract without penalty if there is a Change of Control of the Customer, save that if the Customer is a public- sector body, it may novate or assign the Contract by giving notice to the Supplier.
- 12.4 On termination of the Agreement for any reason: (a) The Customer shall immediately cease all use of the Services and shall make no further use of VF's Confidential Information or any property belonging to it; (b) VF will destroy or otherwise dispose/ delete of any of the Customer Data in its possession.
- 12.5 Any rights, remedies, obligations or liabilities of the parties that have accrued up to termination, shall not be affected or prejudiced.

13 Definitions and Interpretation

- 13.1 The words and expressions set out below shall have the following meanings:

Agreement: the agreement between VF and the Customer for the provision of the Services which incorporates the Investment Proposal and Key Terms, these terms and conditions and the Schedules.

Applicable Law: all laws and regulations applicable to the Agreement and the Services, including without limitation the Data Protection Legislation.

Authorised Users: Those employees, agents, licensees and independent contractors of the Customer who have a login in and password and are authorised by the Customer and VF to use the Services, as further described in clause 2.

RPI: The Retail Prices Index figure published by the Office of National Statistics from time to time.

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

Candidate: An individual looking for work who accesses the Platform, and Candidates shall be construed accordingly.

Candidate Data: The data that the Candidates have submitted via the Platform.

Charges: The charges payable in accordance with the Agreement, as set out in the Investment Proposal and Key Terms.

Confidential Information: Information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 8.

Customer: the business specified on the Investment Proposal and Key Terms. Also referred to as “You”.

Customer Data: The data inputted by the Customer or its Authorised Users, (including data inputted by VF on the Candidate’s behalf) including without limitation, job descriptions, CV’s, interview templates provided by the Customer, candidate information (including Personal Data), job boards and advertising materials to the extent it does not form part of VF’s IPR.

Customer IPR means all Intellectual Property Rights owned by the Customer now or in the future.

DPA: a data processing agreement.

Data Protection Legislation: The General Data Protection Regulation ((EU) 2016/679) (GDPR) and the Data Protection Act 2018 (DPA 2018) as may be amended, re-enacted or modified from time to time.

Engagement: in the context of Recruitment Services, means engagement, employment or use of the Candidate by the Customer on a permanent or temporary basis.

Intellectual Property Rights (IPR): Patents, rights to inventions, copyright in related rights, trademarks, trade names, domain names, rights and get up, rights in good will or to sue for passing off, unfair competition rights, rights in designs, rights in computer software and the Platform, rights in databases, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property right in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and renewals or extensions as such rights, and/or similar or equivalent rights or forms of protection in any part of the world.

Maintenance and Support: Any error corrections, updates and upgrades that VF may provide or perform with respect of the Platform as well as any other support or training services provided to the Customer as may be agreed under the Agreement.

Normal Business Hours: 9:00 am to 17:30 pm local UK time, each Business Day.

Personal Data: shall have the meaning ascribed in the Data Protection Legislation.

Platform: The Vacancy Filler software platform.

Recruitment Services: services supplied by VF which are akin to an employment agency.

Report Data: Data in any media generated or produced by virtue of the use of the Services, which the Customer may use to assess the numbers of Candidates who have applied for jobs, suitability and success rates.

Services: The Platform and other services provided by VF to the Customer under the terms of this Agreement.

Terms of Use: VF's terms of use for the Services which are displayed via Terms of Use

VF: Vacancy Filler Limited, a company registered in England and Wales with company number: 06753483

VF IPR: All Intellectual Property Rights owned or licensed to VF now or in the future including but not limited to all Intellectual Property Rights in and to: (a) the Services; (b) the Platform (including but not limited to its entire code base and geographical assets); (d) any report templates; (e) any database used in connection with the Platform (including but not limited to the database architecture); (f) all trade mark's, logos and branding used by VF (save for the Customer's trade mark's, logos and branding); and (g) job board and advertisement templates.

VF Policies: VF's Privacy, Data Protection Privacy and Cookies Policy can be provided on request

Change of Control: The beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls, controlled and the expression change of control shall be construed accordingly.

- 13.2 Clause and paragraph headings shall not affect the interpretation of the Agreement.
- 13.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 13.4 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 13.5 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Agreement and shall include all subordinate legislation made as at the date of the Agreement under that statute or statutory provision.
- 13.6 A reference to writing or written includes e-mail but not fax.
- 13.7 References to clauses and schedules are to the clauses and schedules to the Agreement.
- 13.8 If there is any conflict between the terms of the documents which constitute our agreement with you, they shall be given the following order of priority: (1) Investment Proposal and Key Terms; (2) these Terms and Conditions; and (3) the Schedules to the Investment Proposal and Key Terms.

14 Variation and Waiver

- 14.1 No variation of the Agreement shall be effective unless it is in writing and signed by the parties authorised representatives. No failure or delay by a party to exercise a right or remedy provided under the Agreement shall constitute a waiver of that right or remedy or restrict that party in any manner.

15 Force majeure

- 15.1 Both parties shall have no liability to the other under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of VF or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or equipment, fire, flood, storm or default of the others sub-contractors.

16 Dispute Resolution

- 16.1 If any dispute arises in connection with the Agreement, a Director or senior representative of the parties with authority to settle a dispute, within 14 days of a written request of one party to the other, shall meet in good faith in an effort to resolve the dispute. If the parties are unable to resolve a dispute informally at the meeting the parties will attempt to settle it by mediation in accordance with CEDR Model Mediation Procedure.

17 Rights and remedies

- 17.1 Except as expressly provided in the Agreement, the rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

18 Severance

- 18.1 If any provision (or part of a provision) of the Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

19 Entire agreement

- 19.1 The Agreement 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. Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of, any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Agreement or not) relating to the subject matter of the Agreement, other than as expressly set out in the Agreement.

20 Assignment and sublicensing

- 20.1 The Customer shall not, without the prior written consent of VF, assign or charge all or any of its rights or obligations under the Agreement. VF may at any time assign, transfer, charge, sub-contract or deal with any of its rights or obligations under the Agreement.

21 Third Party Rights

- 21.1 The Agreement does not give any rights under the Contract (Rights of Third Parties Act) 1999 to any party who is not a party to the Agreement.

22.1 Notices

- 22.2 Any notice given to party under or in connection with this Agreement shall be in writing and shall be delivered recorded delivery at its registered office or principal place of business (in any other case). It shall be deemed to have been received at 9am the second Business Day after posting.

23.1 Governing Law and jurisdiction

- 23.2 The Agreement and any dispute or claim (including contractual and non-contractual disputes or claims) arising out of or in connection with its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales. Each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales to settle any dispute or claim.