



Tribal Business Solutions Services – Standard Terms and Conditions

These Terms and Conditions apply only where a signed Order Form is agreed between the Parties

Recitals:

1. You wish to benefit from certain skills and abilities of Tribal;
2. Tribal Business Solutions is in the business of providing HR consultancy, payroll, recruitment and IT related services ensuring a high level of service, reliability, and compliance with applicable laws and is willing and able to provide its services to the CUSTOMER for the period contemplated by this Agreement;
3. You have offered and Tribal has accepted engagement, on the terms set out in this Agreement, to provide services to You as set out in the Order Form.
4. Where Tribal are selected to act as a Reseller for any software provider (set out in the Order Form and the Product Descriptions) then this Agreement will be deemed to include the terms and conditions referenced therein. Should there be a conflict between such terms and those of this Agreement then this Agreement shall take precedence in accordance with clause 2.1.

IT IS THEREFORE AGREED as follows:

1. Definitions and Interpretation

- 1.1 If there is any conflict between these Terms and the Order Form, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.1.1 The Order Form;
 - 1.1.2 The clauses to this Agreement; and
 - 1.1.3 Schedules to this Agreement.
- 1.2 In this Agreement the expressions set out below have the following definitions:

“Agreement” means the terms and conditions set out herein, and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Parties.

“Data Protection Legislation” means any applicable Law relating to the processing, privacy, and use of Personal Data including the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and/or the Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and

repealing Directive 95/46/EC (General Data Protection Regulation) (“GDPR”), and/or any corresponding or equivalent national laws or regulations;

“Confidential Information” means all information or data (including oral and visual data and all information and data recorded in writing or in any other medium or by any other method) relating to a party including but not limited to any information relating to a party’s operations, processes, plans, intentions, product information, know how, design rights, trade secrets, software, market opportunities, Customers, Tribal Business Solutions’ and business affairs;

“Force Majeure” means any cause or circumstance beyond a party’s control which cannot reasonably be prevented by the taking of steps which could reasonably be expected to be taken;

“Goods” means tangible items to be provided to the CUSTOMER by Tribal Business Solutions (including any instalment of the goods or any part of them) described in the Appendix 1;

“Parties” means 5pm and Tribal Business Solutions;

“Party” means CUSTOMER or Tribal Business Solutions;

“Price” means the price of the Goods and/or the charge for the Services;

“Services” means all services (including any part of them), management, personnel, training, research and reporting as described in the Appendix 1;

“Specification” includes any plans, drawings, data or other information relating to the Goods and/or the Services which are appended to this Agreement and referenced herein within Appendix 1.

“Works” means all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, invention, idea, discovery, development, improvement or innovation and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by Tribal Business Solutions in the provision of the Goods and/or Services.

1.3 In this Agreement:

- 1.3.1 references to a party include references to its successors and assigns (legal and equitable) which will be deemed to be a party to this Agreement;
- 1.3.2 references to a party means any party to this Agreement and references to a third party means any person who is not a party to this Agreement;
- 1.3.3 references to a person means any individual, body corporate, unincorporated association or body (including joint venture or partnership), government, public, local or municipal authority or international organisation;
- 1.3.4 references to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended or re-enacted and any subordinate legislation made from time to time under that statute or statutory provision;
- 1.3.5 references to any document being in an agreed form are to that document in the form signed by or on behalf of the parties for identification;

- 1.3.6 references to recitals, clauses and schedules are to recitals, clauses and schedules of this Agreement unless otherwise specified;
- 1.3.7 if there is any conflict between any of the provisions of this Agreement and those contained in the Proposal for the provision of the Services to the CUSTOMER and/or Tribal Business Solutions Terms and Conditions the provisions of this Agreement shall prevail;
- 1.3.8 if there is any conflict between any of the provisions of this Agreement the conflict shall be resolved in the following order of priority:
 - a. the clauses of this Agreement;
 - b. any Appendix contained within this Agreement; and
 - c. the recitals of this Agreement;
- 1.3.9 any undertaking by a party not to do any act or thing shall be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
- 1.3.10 “holding company”, “subsidiary” and “wholly-owned subsidiary” have the meanings given to them by section 736 of the Companies Act 1985;
- 1.3.11 a company is an “associated company” of another company if that other company holds 20% or more of the voting rights exercisable at general meetings of the first company, on all, or substantially all, matters;
- 1.3.12 “control” has the meaning given by section 840 of the Income and Corporation Taxes Act 1988;
- 1.3.13 the headings are used for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.3.14 words in the singular shall include the plural and vice versa and words in the masculine shall include the feminine and vice versa; and
- 1.3.15 where any general words are used in this Agreement, the interpretation of such words shall not be limited by reference to the subject matter in the context of which they are used.
- 1.4 A person who is not a party to this Agreement has no right under The Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

2. Basis of Purchase

- 2.1 This Agreement shall apply to the exclusion of any other terms and conditions which Tribal Business Solutions has sought to or subsequently seeks to impose on the CUSTOMER.
- 2.2 No variation to this Agreement shall be binding unless agreed in writing between the authorised representatives of each of the Parties.

3. Specification

- 3.1 Tribal Business Solutions shall comply with all applicable regulations and/or other legal requirements concerning the performance of the Services.
- 3.2 No variation to this Agreement shall be binding unless agreed in writing between the authorised representatives of each of the Parties.

4. Price and Payment

- 4.1 The Price of the Services shall be as stated in Appendix 1 and unless stated otherwise, shall be inclusive of all charges other than Value Added Tax.
- 4.2 Should this Agreement Term exceed one year, then Tribal Business Solutions shall review the pricing set out herein and compare it to the then prevalent Consumer Price Index ("CPI"). Where this identifies that there has been an increase in price inflation over the previous 12 months, then Tribal Business Solutions shall have the right to increase the Prices set out herein by a maximum of the increase in the CPI over the preceding 12 month period. Any such Price increase shall be evidenced in writing to the Customer and shall only be chargeable from 30 days from the date of notification onwards.
- 4.3 Should, prior to the anniversary of this Contract Commencement, Tribal identify a significant cost of sales increase (up to 20% of the contract price set out herein for any service) then Tribal shall have the right, subject to provision of written notice to You, providing reasonable explanation and evidence of such cost of sale increase, no less than 30 days prior to such increase being applicable to any ongoing charges set out herein. Should this clause not be applicable then any price increase thereafter shall be subject to the provisions of clause 4.2.
- 4.4 Tribal Business Solution's official invoice should be sent promptly to the CUSTOMER after delivery of the Services, as the case may be, to the address indicated and unless otherwise instructed and must show:
 - a. CUSTOMER's purchase order number;
 - b. an Invoice number;
 - c. a full description of the Services;
 - d. full details of prices; and
 - e. any discount allowed.

- 3.2 Unless otherwise stated in this Agreement or agreed in writing, the payment of the agreed Price will be made within 30 days of receipt of a correct invoice.

- 3.3 Value Added Tax, where applicable, shall be shown separately on all invoices.

5. Tribal Business Solutions and the Customer Obligations

- 5.1 The Services shall be performed in accordance with the specification detailed in the Order Form.
- 5.2 Tribal Business Solutions shall carry out the provision of Services in an expert and diligent manner using all reasonable care and attention in accordance with good industry standard and to promptly and faithfully comply with and observe any and all lawful and proper requests which may be made to the CUSTOMER (or by such other person or persons as they may nominate from time to time under this Agreement) and:
- 5.2.1 in case of illness, accident, absence on leave or any other reason preventing the performance of the Services by any of its staff, Tribal Business Solutions shall immediately upon becoming aware of such an event, notify the CUSTOMER of such illness, accident, absence on leave or other reason;
 - 5.2.2 without charge to the CUSTOMER correct any defective work carried out as part of or comprising the Services;
 - 5.2.3 use its reasonable endeavours to ensure that the provision of the Services does not infringe any third party's Intellectual Property Rights or copyright and hereby indemnifies and keeps the CUSTOMER indemnified against any infringement of any third-party rights in such that may occur;
 - 5.2.4 will not perform any act likely to prejudice the operation of the CUSTOMER's systems or the efficiency of the CUSTOMER's business and in particular, not to install on the CUSTOMER's computer equipment and/or systems any equipment, software or electronic files or anything else that are not authorised in advance by the CUSTOMER; and
 - 5.2.5 ensure that any employees and/or staff (and/or consultants and/or sub-contractors where applicable) meet and continue to comply with all relevant legislative requirements necessary to enable each and every one of them to deliver the Services to the standard set out above. This will include, (but in no-way be limited to) ensuring that the relevant individuals are entitled to work within the United Kingdom and that they satisfy any and all relevant checks as to their suitability to deliver the Services such as appropriate security vetting and Safeguarding checks.
- 5.3 In relation to any Third-Party requests or support provision required by the CUSTOMER, Tribal Business Solutions may offer its assistance either at an additional agreed cost or as part of the service level agreement, however the CUSTOMER remains solely responsible for managing the delivery of any Third-Party services, goods or appointments. Tribal Business Solutions accepts no liability for any delays, failures, or deficiencies in such delivery, nor for any loss, damage, or expense arising from the CUSTOMER's management of these obligations.
- 5.4 In relation to payroll services only, if the Services are not performed on the due date then (unless the reason for such delay is for reasons outside Tribal Business Solutions' reasonable control), without prejudice to any other remedy, the CUSTOMER shall be entitled to deduct from the Price or, if the CUSTOMER has already paid the Price, to claim from Tribal Business Solutions an amount equal to the additional costs directly incurred (and reasonably evidenced) by the CUSTOMER as a result of the delay.

- 5.5 The CUSTOMER shall make available all staff, contractors and access to people and facilities as set out and required in the Schedule(s) in order for the Services to be delivered in a timely and compliant fashion. Should the CUSTOMER be unable to fulfil these requirements, Tribal Business Solutions will notify the CUSTOMER and shall be relieved of its obligations to deliver the Services to any timescales or locations agreed under Schedule 1 until those requirements are met by the CUSTOMER and any remedies that would otherwise be due to the CUSTOMER hereunder shall not be effective until those requirements are met.
- 5.6 Both Parties agree that neither they nor any of its employees, staff, consultants and/or sub-contractors shall during the period of this Agreement and for twelve months after its termination directly or indirectly:
- 5.6.1 interfere or seek to interfere in any contract between the other Party and any third party; and/or
 - 5.6.2 solicit or seek to solicit any person, firm or company to terminate or alter any contractual relationship between the other Party and another third party; and/or
 - 5.6.3 discourage any person, firm or company from entering into contractual relations with the other Party; and/or
 - 5.6.4 make any disparaging remarks about the other Party and/or any of its directors or managers; and/or
 - 5.6.5 approach, employ (other than by way of a genuine response to a recruitment advertisement) or solicit any person who has during the previous 12 months been an employee of the other Party without the prior written approval of that party.
- 5.7 The following form must be completed by the CUSTOMER upon signing by both Parties of this Agreement. Once completed this will set the CUSTOMER up on Tribal's finance systems: [New Customer \(NexSphere\)](#).

6. Assignment and Sub-Contracting

- 6.1 Neither party may assign or sub-contract any of its rights or obligations under this Agreement without the other's prior written consent, which shall not be unreasonably withheld, except to a subsidiary or holding company of it.
- 6.2 This clause 6 shall survive the expiry or termination of this Agreement and shall continue in force and effect.

7. Quality Assurance

- 7.1 Tribal Business Solutions shall operate a self-regulatory system of quality assurance and quality measures relating to the Agreement in addition to any quality requirements in Schedule 1 which ensures that the Services are provided in accordance with the requirements of the Agreement and Tribal Business Solutions shall check that information, data or software supplied pursuant to the Agreement is fit for the purpose for which the CUSTOMER intends to use it.

8. Document Retention

- 8.1 All documentation produced for the Services shall be retained by Tribal Business Solutions for the duration of the Services and may only be disposed of with prior written approval by the CUSTOMER. Tribal Business Solutions shall send copies of the documentation to the CUSTOMER upon written request and in accordance with statutory requirements.
- 8.2 Within 30 working days of date of termination or expiry, return or destroy any data or information, save that it may keep one copy of such data or information for a period as is necessary for such compliance.

9. Warranties and Liability

- 9.1 Tribal Business Solutions will maintain professional indemnity and public liability insurance in each case with a reputable insurance company providing a minimum cover of £1million pounds. (One million pounds) and shall provide evidence of such upon request by the CUSTOMER.
- 9.2 With exception to liability for death or personal injury, the liability of both Parties under this Agreement shall be limited to the Price of the Services and exclude any loss of profits, indirect losses or consequential losses, except for claims for which liability cannot be limited by law.

10. Force Majeure

- 10.1 Subject to clauses 10.2 and 10.3, if a Force Majeure Event occurs which prevents or delays the performance of either party's obligations under this Agreement:
 - 10.1.1 the obligations of the party whose performance is prevented or delayed shall be suspended during the period that the Force Majeure Event continues; and
 - 10.1.2 that party shall perform its obligations as soon as practicable following the termination of the Force Majeure Event.
- 10.2 Clause 10.1 does not apply unless the party claiming to benefit from that clause:
 - 10.2.1 notifies the other of the Force Majeure Event and its consequences as soon as possible after it occurs;
 - 10.2.2 promptly provides the other with any further information which the other requests about the Force Majeure Event or its consequences;
 - 10.2.3 promptly takes any steps (except steps involving significant additional costs) which the other reasonably requires in order to reduce the other's losses or risk of losses including bringing the Force Majeure Event to a close or finding a solution by which this Agreement may be performed despite the continuation of the Force Majeure Event.

- 10.3 If the Force Majeure Event continues for more than 30 consecutive days either party may terminate this Agreement immediately by written notice on the other. If this Agreement is terminated under this clause Tribal Business Solutions shall be entitled to be paid a reasonable sum for all work performed before the date of termination (after deduction of any sums already paid by the CUSTOMER to Tribal Business Solutions).

11. Termination

- 11.1 Either party shall be entitled to terminate this Agreement without liability to the other by giving notice to other Party at any time if:
- a. The other Party makes any voluntary arrangement with its creditors or becomes bankrupt or becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
 - b. a receiver is appointed, of any of the property or assets of the other Party; or
 - c. the other Party ceases, or threatens to cease to carry on business; or
 - d. either Party reasonably believes that any of the events mentioned above is about to occur in relation to other Party and notifies that Party immediately.
- 11.2 Either Party shall be entitled to cancel the Agreement in respect of all or any part of the Goods and/or the Services by giving notice to the other as detailed in Schedule 1.
- 11.3 Upon such Termination by either party, the CUSTOMER shall pay to Tribal Business Solutions all of Tribal Business Solutions' outstanding unpaid invoices and, in respect of Services supplied but for which no invoice has been submitted, Tribal Business Solutions may submit an invoice for delivered services, which shall be payable in accordance with the terms set out hereunder up to the date of effect of such notice. For the avoidance of doubt Tribal Business Solutions will provide all those services paid for by the CUSTOMER up until the date of effect of such Termination.

12. Intellectual Property Rights

- 12.1 Any intellectual property created by Tribal Business Solutions during the provision of Services will be vested in Tribal Business Solutions unless expressly required to be created on behalf of the Customer as part of the provision of Services and set out in the Order Form.
- 12.2 All pre-existing Intellectual Property Rights in the Services shall vest solely in Tribal Business Solutions and Tribal Business Solutions hereunder provides the CUSTOMER with a non-exclusive licence to use (and provide its consultants and / contractors such rights) the Services in the United Kingdom during the Term of this Agreement.

13. Data protection/Confidentiality

- 13.1 The Parties shall each comply with their obligations with respect to Personal Data as set out in the Data Protection Legislation, and for the purposes of the Data Protection

Legislation Tribal Business Solutions shall be a Data Processor and the CUSTOMER the Data Controller.

- 13.2 CUSTOMER may provide Personal Data to Tribal Business Solutions together with such other information as may reasonably be required in order for Tribal Business Solutions to provide the Services.
- 13.3 Tribal Business Solutions undertakes and warrants that it shall:
- a. process the Personal Data only in accordance with the Data Protection Legislation and the terms of this Agreement;
 - b. process the Personal Data strictly in accordance with the CUSTOMER's lawful instructions as communicated to Tribal Business Solutions in writing from time to time;
 - c. ensure that only Tribal Business Solutions personnel who may be required to assist it in meeting its obligations under this Agreement shall have access to the Personal Data; and
 - d. have in place and shall maintain appropriate operational and technological processes and procedures to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of the Personal Data.
- 13.4 Tribal Business Solutions shall not disclose the Personal Data to any third party, other than those engaged in provision of the Service or as required by operation of law.
- 13.5 Tribal Business Solutions will assist the CUSTOMER with all information requests which may be received from Data Subjects and use reasonable endeavours to enable the CUSTOMER to comply with such requests.
- 13.6 Neither party will disclose or use or cause to be disclosed or used, at any time during or subsequent to this Agreement, any secret or confidential information of the either party or any of its Customers or companies or any other non-public information relating to the business, financial or other affairs of the other party acquired by it or its employees and/or staff and/or consultants and/or sub-contractors except as required by law.
- 13.7 All notes, computer disks and tapes, memoranda, correspondence, records, documents and other tangible items made, used or held by the receiving party in the course of providing Services under this Agreement will be and remain at all times the property of the disclosing party. At any time, whether prior to or upon the termination or expiration of this Agreement, the receiving party shall deliver to the disclosing party all such tangible items which are in its possession or under its control relating to the disclosing party, its business affairs, companies and/or the Services and they may not make or retain copies.
- 13.8 GDPR Compliance and Liability in its entirety remains with the Data Controller. The Data Controller shall be solely responsible for:
- a. Ensuring that the Personal Data provided to the Data Processor has been collected and processed lawfully
 - b. Providing accurate, complete, and lawful instructions for processing
 - c. Ensuring that appropriate legal bases exist for all processing activities
 - d. Responding to data subject requests and fulfilling data subject rights under the UK GDPR

- 13.9 To the extent permitted by law, the Data Processor shall not be liable for any claim, loss, or damage arising from:
- a. The Data Controller's failure to comply with its obligations under applicable data protection laws;
 - b. Instructions from the Data Controller that are unlawful or inconsistent with the UK GDPR
 - c. Any breach of data protection laws caused by the Data Controller's actions or omissions
- 13.10 The Data Controller agrees to indemnify and hold harmless the Data Processor against any claims, liabilities, damages, or expenses (including reasonable legal fees) arising from or related to the Data Controller's breach of its obligations under this Agreement or applicable data protection laws.
- 13.11 Further details of the Personal Data to be processed by the Parties are set out in Schedule 2 - Processing of Personal Data.

14. Security

- 14.1 The CUSTOMER may be engaged in a number of different types of business, and will advise Tribal Business Solutions from time to time of such security requirements and any changes to those requirements and Tribal Business Solutions shall abide by those requirements at all times during the provision of Services hereunder.

15. Safeguarding

- 15.1 Tribal Business Solutions hereby undertakes and warrants that it will comply with all legislation relating to the protection of children and vulnerable adults and will at all times operate in accordance with a CUSTOMER's safeguarding policy, a copy of which **should be** available to Tribal Business Solutions. In addition, Tribal Business Solutions may be notified in writing of the CUSTOMER's requirement for Tribal Business Solutions to provide evidence of having completed a successful DBS check prior to beginning the provision of Services under this Agreement.

16. Complaints

- 16.1 If you should have need to complain about the advice or service you receive from Tribal Business Solutions Limited please contact the Managing Director at the address detailed above.
- 16.2 We will acknowledge in writing advising you of who is dealing with your concerns and attempt to address your concerns within five working days. If our investigations take longer, we will provide a full response within twenty working days or explain our position and provide timescales for a full response.

17. General

- 17.1 Tribal Business Solutions hereby warrants and undertakes that they or its staff have not been convicted or investigated or prosecuted in an act of bribery or corruption, are not

being investigated in such and agree to abide by all laws regarding the prevention of bribery and corruption (such as the UK Bribery Act 2010).

- 17.2 Any notice required or permitted to be given by either Party to the other Party under this Agreement shall be in writing addressed to that other Party.
- 17.3 No waiver by either Party of any breach of the Agreement shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 17.4 If any provision of this Agreement is held to be invalid or unenforceable in whole or in part, the validity of the other provisions of this Agreement and the remainder of the provision in question shall not be affected.
- 17.5 Neither Party shall issue any press release or make any public statement concerning the CUSTOMER, its employees, agents, councillors, the Goods and/or Services without the prior written consent of the other.
- 17.6 Signature of this Agreement will be deemed to bind both Parties to this Agreement and no Services shall be performed by Tribal Business Solutions, its employees, agents or representatives, except in accordance therewith.
- 17.7 This Agreement and Schedule(s) constitute the entire understanding between the Parties relating to the subject matter of the Agreement and, save as may be expressly referred to or referenced herein, supersede all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either Party.
- 17.8 Unless explicitly stated otherwise herein, this Agreement does not confer any right enforceable against the Parties under the Contracts (Rights of Third Parties) Act 1999.
- 17.9 The Agreement is to be governed according to the laws of England and the Parties agree to submit to the exclusive jurisdiction of the English courts.

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