

"Agreement" means the Sales Order, the Quotation, the Proposal and, these General Terms and Conditions for Services.

"Assessment Services" shall mean services whereby Cubiks assesses a candidate or candidates for potential selection and/or development. This may include feedback to candidates, if agreed with the Customer. The output shall consist of verbal and/or written recommendations to assist the Customer in selection for employment and/or development.

"Confidential Information" means all confidential information, both written and oral, received by one party from or on behalf of the other in connection with the performance of the Services to include without limitation all data, results of assessments, assessment content, software, business systems, methodologies, proprietary systems and/or application programs and information regarding the parties themselves and/or any holding company or subsidiary of each party or other subsidiary of such holding company.

"Cubiks" means the Cubiks company set out in the Sales Order.

"Customer" means the customer set out in the Sales Order.

"Development Services" shall normally mean services to develop/coach an employee or employees and the output shall consist of verbal and/or written recommendations.

"Fees" means the fees payable by the Customer as set out in the Quotation.

"Proposal" means any proposal provided by Cubiks which may describe the Services and the Fees payable by the Customer.

"Quotation" means the quotation provided by Cubiks.

"Services" means the services described in the Sales Order, the Quotation and the Proposal.

"Sales Order" means the sales order provided by Cubiks.

1 EFFECTIVE DATE AND TERM

- 1.1 The Effective Date of this Agreement shall be the date on which the Customer accepts a Quotation, confirms a Sales Order, instructs Cubiks to commence the Services or commences the use of the Services whichever occurs first.
- 1.2 The term of this Agreement shall be twelve months from the Effective Date and then continuing, subject to paragraph 5.6 (Charges and Invoicing) on the same terms and conditions until terminated in accordance with paragraph 10 (Termination).

2 CONFIDENTIAL INFORMATION

- 2.1 Each party agrees during the term and for a period of two years after the expiry or termination of this Agreement to keep confidential the Confidential Information and will not use or disclose it except as necessary for the performance of this Agreement.
- 2.2 This duty of confidence will not extend to any part of the Confidential Information which is lawfully in the possession of the receiving party at the time of disclosure, published either before or after the date of such disclosure through no fault of the receiving party, lawfully received from a third party, independently developed or created by the receiving party or required to be disclosed by law.
- 2.3 Each party shall ensure that its employees, officers, representatives, advisers, agents or sub-contractors to whom it discloses Confidential Information comply with this paragraph 2.

3 INTELLECTUAL PROPERTY

- 3.1 Intellectual Property ("IP") includes, without limitation, all property in and rights under copyright, patents, database rights, design rights, business names, trade names, trademarks and any other form of intellectual property right, process or know-how but excludes data relating to the Customer's employees or potential employees.
- 3.2 Any IP developed during, or used in the delivery of the Services belongs wholly and exclusively to Cubiks. Where the IP of a third party is used in the delivery of the Services (save as specified by the Customer and referred to in paragraph 3.3 below), Cubiks holds an appropriate licence.
- 3.3 The Customer will provide any trademark, logo, branding, content, competencies, items and/or other materials which the Customer requires to be used as part of providing the Services and/or incorporated in the output of the Services and all facilities, materials, data, drawings, specifications, reports, tools, software programmes and other information and resources as Cubiks may reasonably request in order to successfully provide the Services.
- 3.4 In respect of everything described above as may be provided by the Customer or on the Customer's behalf to Cubiks, the Customer confirms (a) that it holds an appropriate licence for use by Cubiks in connection with providing the Services under this Agreement and for inclusion in Cubiks' output of the Services, and (b) the Customer is responsible for ensuring that they meet the Customer's requirements and understands that they have not been validated by Cubiks.
- 3.5 Upon completion of Assessment Services and/or Development Services and on receipt of payment in full by the Customer, Cubiks will grant the Customer a royalty-free, non-exclusive, non-transferable licence to use the resulting reports and recommendations for the objectives set out in the Proposal for HR purposes in its internal business operations.
- 3.6 The Customer undertakes to use such reports and recommendations in accordance with any objectives described in the Proposal, to provide feedback where necessary and not included as part of the Services and otherwise to use such reports and recommendations as part of a proper and ethical HR policy.
- 3.7 All other results from the provision of the Services, for example, tailored assessment content or exercises are normally licensed in accordance with a Cubiks licence or hosting agreement and this Agreement does not grant any such licence.

4 PARTIES' OBLIGATIONS

- 4.1 Cubiks will perform the Services with reasonable care and skill to ensure that the Services conform in all respects with the Agreement.
- 4.2 The Customer is responsible for ensuring that the Services serve a business purpose for assessing a candidate or a group of candidates and that they correspond with applicable job criteria, for validating the use and application of the Services and uniformly administering them in a manner which is not illegally discriminatory or otherwise in contravention of any applicable employment, data protection or other law.
- 4.3 The Customer shall promptly (a) make decisions and inform Cubiks of the result of those decisions when Cubiks requests the Customer to do so, and (b) co-operate with Cubiks to the extent required to achieve the objectives set out in the Proposal or otherwise in this Agreement.

- 4.4 Cubiks shall be responsible for managing any sub-contractor which Cubiks appoints. The Customer acknowledges that the Customer is responsible for instructing and managing any other third party supplier.
- 4.5 The Customer shall be responsible for any cost of complying with the Customer's own obligations under this paragraph 4.
- 4.6 Cubiks' ability to provide the Services in accordance with any agreed timetable and Fees and generally in accordance with this Agreement will depend upon the Customer's compliance with this paragraph 4. If the Customer fails to comply with this paragraph 4, Cubiks will discuss the consequences with the Customer and agree any additional fees before they are incurred whenever reasonably possible.

5 CHARGES AND INVOICING

- 5.1 Unless agreed otherwise, Fees for Services delivered during each calendar month are due and payable by the Customer and may be invoiced at the end of that month.
- 5.2 Unless agreed otherwise, invoices shall be paid by the Customer within 30 days of the date of the invoice failing which Cubiks may, at its option, suspend performance of the Services and charge the Customer interest accruing thereafter on all overdue amounts on a daily basis at the rate of four per cent (4%) per annum above the base lending rate of National Westminster Bank plc from time to time,
- 5.3 Reasonable travel and subsistence costs incurred by Cubiks or any sub-contractor appointed by Cubiks for the provision of the Services ("Expenses") shall be reimbursed by the Customer and shall be due and payable monthly in arrears.
- 5.4 Where the Services are performed wholly or partly outside the jurisdiction of this Agreement, Cubiks reserves the right to appoint a locally based company within the Cubiks group, a distributor or an associated company as their agent for the purposes of delivering the Services, issuing invoices and nominating the currency in which invoices are to be paid.
- 5.5 Payment must be made without any set-off or counter claim and free of deduction or withholding of any taxes or governmental charges (except as required by law). If any deduction or withholding tax is required by law, the Customer agrees to pay to Cubiks the amount of such deduction or withholding of tax.
- 5.6 Cubiks may increase the Fees and Expenses on 1 January each year subject to giving the Customer notice by 1 November of the previous year. If no notice is given, the Fees and expenses shall increase automatically each year on 1 January in line with the Retail Price Index for the United Kingdom published in October of the previous year. VAT and/or any other sales tax or duties will be added and charged to the Customer where applicable.

6 SCHEDULING, RE-SCHEDULING AND CANCELLATION OF SERVICES

- 6.1 For the avoidance of doubt, in the event that a candidate or a group does not attend on an agreed date (for any reason), it shall be treated as a cancellation, not postponement, and may not be re-scheduled without the prior agreement of Cubiks. If, for any reason, a candidate does not attend on an agreed date for assessment or training services, the Fees shall be due and payable as follows, or as otherwise agreed between the parties in writing:
- Less than 7 days or no notice of cancellation – 100%
- Between 15 and 7 days' notice of cancellation – 50%
- Between 30 and 16 days' notice of cancellation – 25%
- In excess of 30 days' notice of cancellation – 0%
- 6.2 In the event that Fees have been agreed on a "per group" basis and the number of candidates attending on the agreed date is less than agreed (for any reason), the Fees payable by the Customer remain due and payable as if the whole group had been in attendance.
- 6.3 In the event that Fees have been agreed on a "per group" basis and none of the group attends on the agreed date (for any reason), the percentage of Fees payable by the Customer shall be due and payable as set out above.
- 6.4 Any cancellation costs incurred by Cubiks (including but not limited to accommodation charges) will be recharged to the Customer.
- 6.5 Cubiks may cancel a session, for any reason, with at least two (2) working days' notice to the Customer. In such circumstances, Cubiks will refund to the Customer 50% of the total fees for the session and Cubiks will use reasonable efforts to ensure that the session is rescheduled and delivered within 72 hours of the original date.
- 6.6 Once confirmed, payment for other Services, for example, design and development of assessment content, shall be due and payable as set out in paragraph 5 above. These Services may only be cancelled with the prior agreement of Cubiks.

7 RECOMMENDATIONS AND ACCEPTANCE

- 7.1 Any statements Cubiks makes about the results of the Services and all surveys, forecasts, recommendations and opinions (together "Recommendations") in any proposal, report, letter or presentation are made in good faith and on the basis of the information before Cubiks at the time. As their fulfilment depends on a number of factors outside Cubiks' control Recommendations are not held out to be, and will not be taken to be, in any circumstance, a warranty (express or implied) of achievable results.
- 7.2 Acceptance by the Customer of the results of the Services as being compliant with this Agreement shall be deemed to occur on the earlier of (a) confirmation in writing by the Customer to this effect or (b) the commencement of use by the Customer of the results of the Services in the course of business.

8 LIMITATION OF LIABILITY

- 8.1 Nothing in this Agreement shall operate to limit or exclude either party's liability to the other for: (a) death or personal injury resulting from negligence, (b) fraud or fraudulent misrepresentation, deceit, deliberate acts or gross negligence or (c) any other liability where such limit or exclusion is not permitted by law.
- 8.2 Subject to 8.1 and 8.3., the total aggregate liability of Cubiks in any Contract Year (being each period of twelve months starting with the Effective Date or the anniversary of the Effective Date) in connection with this Agreement and/or the Data Agreement and/or resulting from any use of the Services shall not exceed 110% of all sums actually paid by the Customer to Cubiks in accordance with this Agreement during such Contract Year (or during the Term if shorter). The Customer acknowledges that the Fees are based on this limitation being agreed.
- 8.3 To the extent permitted by law, Cubiks shall not be liable to the Customer for any of the following types of loss or damage arising under or in relation to this Agreement:
- (a) loss of profits;
 - (b) loss of business or opportunity;
 - (c) depletion of goodwill or similar losses;

- (d) loss of anticipated savings; and/or
- (e) any special, indirect or consequential loss or pure economic loss.

- 8.4 Cubiks shall not have any liability to the Customer for any delay or failure in the performance of its obligations under this Agreement to the extent that such delay or failure is as a result of a delay or failure by the Customer in the performance of any of its obligations under this Agreement.
- 8.5 the Customer recognises and agrees that the Services must be used in accordance with the terms and conditions of this Agreement, including, without limitation, clause 4.2 above. In the event of any claim against Cubiks related to the Customer's breach of any of the terms, conditions and warranties of this Agreement, the Customer will indemnify Cubiks and hold Cubiks harmless against all damages, liabilities and costs (including reasonable legal fees) which may be suffered or incurred by Cubiks as a result of or in connection with such a claim
- 8.6 This Agreement is made for the benefit of the parties to it and no person or entity other than the Customer shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this Agreement against Cubiks and Cubiks does not accept any liability under this Agreement to any person or entity other than the Customer, save for any liability which may not be excluded by law.
- 8.7 Cubiks shall not have any liability to the Customer for any delay or failure in the performance of its obligations under this Agreement to the extent that such delay or failure is as a result of a delay or failure by the Customer in the performance of any of its obligations under this Agreement.

FORCE MAJEURE

- 9.1 If either of the parties is prevented, hindered or delayed from observing or performing their obligations under this Agreement by any act beyond their reasonable control, (a "**Force Majeure Event**"), the affected party will as soon as reasonably possible, give notice to the other of suspension of performance of this Agreement and will not be liable for any consequent failure to perform its obligations hereunder. If the Force Majeure Event continues for a continuous period of more than 1 month from the date of such notice, either party may, on written notice to the other, terminate this Agreement with immediate effect. The Customer will remain liable to pay Cubiks' Fees and Expenses which are outstanding at the date of termination.
- 9.2 A Force Majeure Event may, inter alia, consist of actions or omissions of a public authority, new or amended legislation, labour conflicts, blockades, war, riots, sabotage, extreme weather conditions, lightning strikes, fire, explosion, flooding, natural disasters, accidents or other events with similar effect.

10 TERMINATION

- 10.1 Either party may terminate this Agreement on thirty days' written notice which may be served following the expiry of twelve months from the Effective Date provided however that this shall not affect any confirmed order for Services. Cancellation of a confirmed order for Services shall be dealt with as set out in paragraph 6 above.
- 10.2 Either party may terminate this Agreement, including any confirmed order for Services, with immediate effect by written notice in the event:
 - 10.2.1 either party is unable to pay its debts as they fall due, either party admits inability to pay its debts or is deemed unable to pay its debts; a court of competent jurisdiction makes an order for the liquidation, administration, bankruptcy or dissolution of the other party; an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer is appointed over all or part of the assets of the other party; on the making of an arrangement or composition with the other party's creditors generally; or any equivalent event having similar effect; and/or
 - 10.2.2 that the other party is in material breach including, without limitation non- payment, which (a) is not remedied within five working days of notice in writing to the party in breach or (b) cannot be remedied.

11 NON-SOLICITATION

During the term of this Agreement and for six months thereafter, neither party will solicit, or endeavour to solicit, in any way the services of or offer to employ or engage any employee of the other without the prior written agreement of the other.

12 PUBLICATION

Subject to Cubiks' confidentiality obligations, Cubiks reserves the right to include the Customer's name on Cubiks' published list of clients to whom Cubiks is providing services unless the Customer advises Cubiks, in writing, to the contrary.

13 DATA PROTECTION

If the circumstances of this Agreement imply that Cubiks will process personal data on behalf of the Customer, the Customer, as the Data Controller, appoints Cubiks as its Personal Data Processor.

The data provided by individuals when participating in assessments shall be processed in accordance with the terms of the relevant data agreement specified below ("the Data Agreement"):

[Cubiks EEA Data Controller Processor Agreement](#) (for Customers controlling and processing personal data within the European Economic Area)

[Cubiks Non-EEA Data Controller Processor Agreement](#) (for Customers controlling and processing personal data outside the European Economic Area).

In the event of an error in relation to either link in this clause 13, please copy and paste the URL into a browser or alternatively contact the Cubiks helpdesk at Support@cubiks.com.

14 ENTIRE AGREEMENT

- 14.1 This Agreement constitutes the entire agreement between Cubiks and the Customer relating to the Services. The Customer acknowledges that any agreement, representation, understanding or discussion which the Customer wishes to rely upon has been recorded in this Agreement. It is expressly agreed that terms and conditions forming part of the Customer's purchase order or similar document shall not form part of this Agreement.
- 14.2 All other terms, conditions and warranties, whether express or implied, statutory or otherwise are excluded to the extent permitted by law and are replaced by the terms in this Agreement.

15 VARIATION

Any variation or addition to this Agreement will only be effective if agreed to by both parties in writing. Cubiks reserves its right, upon such variation or addition, to review and vary its fees, and any estimated timescales or dates for performance of the Services.

16 WAIVER

No delay or omission by either party in exercising any of its rights or remedies under this Agreement, or under any applicable law, will be deemed a waiver of the exercise of such right or remedy or any other right or remedy on any other occasion.

17 NOTICES

Any notice to be served will be validly delivered if sent by recorded or registered post and in such case will be deemed to be received two working days after the date of proof of delivery or by fax in which case it is deemed to be received at the time of transmission.

18 GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), will be construed and interpreted in accordance with the laws of England and Wales, excluding any conflicts of law rules. The parties irrevocably agree to submit to the exclusive jurisdiction of the courts of England and Wales

19 SEVERANCE

The invalidity, illegality or unenforceability of the whole or part of any term or condition of this Agreement does not affect or impair the continuation in full force and effect of the remainder.

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