



Liaison CHC Solutions

Terms and conditions

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1. Interpretation

1.1 In these terms and conditions (and unless expressly stated to the contrary in the Service Agreement) the following expressions shall have the meanings set out beside them:

"Agreement" means a Service Agreement accepted by the Client and the Company; along with these Conditions;

"Client" means the person who accepts a Service Agreement;

"Company" means Liaison (trading name for Liaison Financial Services Limited registered number 06426660) and its successors and assigns;

"Commencement Date" means the date on which the Services commenced as set out in the Services Agreement.

"Conditions" means these terms and conditions for Services and any special terms and conditions agreed in writing between the Client and the Company;

"Corporation Tax" means Corporation Tax as defined under the Income and Corporation Taxes Act 1988;

"Fee" means the Company's fee for provision of the Services, being a sum equal to one third of any Savings;

"PAYE" means the system under which an employer deducts income tax and employee's national insurance contributions from an employee's gross salary and pays the same to the Revenue;

"the Revenue" means HM Revenue & Customs;

"Savings" means any financial benefit (whether present or future) to the Client (whether by way of cost saving, repayment, refund, reduced liability, increased revenue or otherwise) identified in a Savings Statement including (but not limited to) any financial benefit identified in relation to any contract, liabilities, VAT or other taxation or National Insurance.

"Savings Statement" means any report from the Company to the Client issued from time to time in relation to the Services which identifies any Savings;

"Service Agreement" means the document from the Company to the Client to which the Conditions are attached setting out the services to be performed by the Company or any written request from the Client thereafter for services which is accepted by the Company in writing

"Services" means the services to be performed by the Company for the Client as set out in the Service Agreement;

"Initial Term" means five years from the Commencement Date;

"Term" means the duration of this Agreement as set out in clause 6.1; and

"VAT" means Value Added Tax as defined under the Value Added Tax Act 1994 or any sums charged or reclaimed equivalent to Value Added Tax.

1.2 The headings in these Conditions are inserted only for convenience and shall not affect their interpretation.

1.3 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended from time to time.

1.4 Any reference in these Conditions to the singular shall be deemed to include a reference to the plural and vice versa.

1.5 Any reference in these Conditions to a person shall include a body corporate, a corporation, a partnership or an unincorporated association.

1.6 In the event of any discrepancy between the terms of the Service Agreement and these Conditions, the latter shall prevail.

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2. Provision of services

- 2.1 The Company shall provide to the Client, and the Client shall engage the Company to provide the Services, subject to the Conditions. The Conditions shall govern the provision of Services to the exclusion (to the fullest extent permitted by law) of all other terms and conditions whether express, implied, statutory or customary. The Client shall not engage any other party to provide the Services or equivalent services to it, whether directly or indirectly, during the Term.
- 2.2 No variation to these Conditions or the Service Agreement shall be binding unless agreed in writing between the authorised representatives of the Client and the Company.
- 2.3 The Client shall be responsible to the Company for ensuring the accuracy of the terms of any request for or in connection with Services and for giving the Company any necessary information relating to the Services within a sufficient time to enable the Company to provide the Services.
- 2.4 Any instruction (whether written or oral) by the Client to the Company to commence or continue to provide the Services will be deemed to constitute acceptance of the terms of this Agreement by the Client, irrespective of whether the Client's authorised representative has signed the Service Agreement.

3. Liability

- 3.1 The following provisions of this clause 3 set out the entire liability of the Company and its employees, agents and contractors to the Client in respect of the provision of the Services and any breach of the Agreement and any representation (other than a fraudulent misrepresentation for which the Company's liability shall be unlimited), statement or tortious act or omission including but not limited to negligence arising under or in connection with the Agreement.
- 3.2 In the performance of the Agreement the Company accepts:
 - 3.2.1 unlimited liability for death or personal injury resulting from the Company's negligence; and
 - 3.2.2 liability for damage to property resulting from the Company's negligence to a maximum of £2,000,000 per claim or series of claims arising from the same cause, unless otherwise agreed in writing.
- 3.3 Without prejudice to clause 3.2, the Company:
 - 3.3.1 shall not be liable for any loss or damage whatsoever for any calculations or recommendations concerning the Company's assessment of VAT reclaimable by or VAT reclaimed by the Client except in accordance with clause 4.10 below;
 - 3.3.2 excludes all and any liability whatsoever that may occur under Section 63 of the Value Added Tax Act 1994;

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- 3.3.3 shall be liable for any loss or damage in relation to any advice, calculation or recommendation (including without limitation any advice, calculation or recommendation in relation to Corporation Tax or any other similar tax or duty and the liability of employees and/or self-employed contractors of the Client to pay tax, the operation of PAYE by the Client and the payment or otherwise of National Insurance contributions by the Client, its employees and/or any self-employed contractors of the Client) only to the extent of any Fee paid by the Client to the Company strictly in respect of the Savings identified by the Company in such advice, calculation or recommendation;
- 3.3.4 excludes to the fullest extent permitted by law any condition or warranty which might otherwise be implied by reason of statute or common law or otherwise; and
- 3.3.5 excludes any liability in respect of loss of profits, loss of business, loss of revenue, loss of goodwill, loss of anticipated savings, loss of data or information or any indirect, special or consequential loss, howsoever arising, suffered or incurred by the Client and irrespective of whether (i) the Company has been advised, knew or should have known of the possibility of such loss; or (ii) it was caused by the negligence of the Company.
- 3.4 The Company undertakes and agrees to take out adequate insurance cover with an insurance office of repute to cover the liability accepted by it in this clause 3 and on the Client's, reasonable, written request (and to the extent permitted by such insurer(s)), agrees to produce a copy of the insurance policy or policies and relevant renewal receipts for inspection by the Client.
- 3.5 The Fee is determined on the basis of the exclusions and limitations of liability contained in the Conditions. The Client expressly agrees that these exclusions and limitations are reasonable because of the disproportionately high cost to the Company of taking out insurance cover and the likelihood that in the absence of the exclusions and limitations the amount of damages that may be awarded to the Client for the Company's negligence or breach of the Agreement may be disproportionately greater than the Fee.
- 3.6 Nothing in this clause 3 is intended to exclude or limit liability in respect of any matter for which it would be illegal for the Company to exclude or limit or attempt to exclude or limit its liability.
- 3.7 The provisions of this clause 3 shall survive termination of this Agreement (howsoever arising)

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4. Fee and payment

- 4.1 In consideration of the provision of the Services the Client shall pay to the Company the Fee.
- 4.2 The Fee shall be calculated by reference to the Savings identified in any Savings Statement.
- 4.3 All payments to the Company shall be made against the Company's invoice, which shall be presented in accordance with clause 4.4 below, within 14 days of receipt by the Client.
- 4.4 Subject to clauses 4.9, 4.11 and 6.6 the Company may invoice the Client for any Fee due in relation to any Savings upon the Client receiving the benefit of such Savings provided that where the Client receives part of the benefit of a Saving the Company may invoice the Client for that part of the Fee attributable to the benefit received by the Company.
- 4.5 All charges and other sums payable by the Client under the Agreement are exclusive of any applicable VAT which shall be payable by the Client in addition to the charge or sum in question.
- 4.6 All payments to be made by the Client to the Company under the Agreement which are not reasonably disputed shall be made in full without any withholding, set-off, restriction or condition and without any deduction for or on account of any counterclaim.
- 4.7 If the Client fails to pay, on the due date set out in clause 4.3, any amount which is payable to the Company pursuant to the Agreement then, without prejudice to clauses 4.8 and 6 the amount shall bear interest from the due date until payment is made (both before and after any judgment) at an annual rate of four per cent per annum over Clydesdale Bank base rate from time to time.
- 4.8 If the Client fails to make any payment which is properly demanded on the date due then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled:
 - 4.8.1 to terminate this Agreement or any other agreement between the Company and the Client or suspend the provision of any Services with immediate effect; and
 - 4.8.2 to appropriate any payment made by the Client to such of the Services (or the services supplied under any other agreement between the Client and the Company) as the Company, acting reasonably, may think fit.
- 4.9 The Client will use its reasonable endeavours to recover or achieve (or assist in the recovery or achievement) of all Savings. In the event the Client does not comply with its obligations under this clause in respect of any Saving to the reasonable satisfaction of the Company, the Company shall be entitled to invoice the Client for the Fee based on its estimation of the Savings which would have been achieved had the Client used its best endeavour to achieve such Savings.

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- 4.10 If in the provision of the Services, any Savings which the Company calculates as recoverable by the Client in a Savings Statement are subsequently judged to be incorrect either by the Revenue or a VAT Tribunal in relation to VAT, the Company agrees to reimburse the Client for that percentage of the Fee paid to the Company which equates to the percentage by which the Savings identified by the Company to be recoverable is reduced. Such reimbursement of Fees shall be given provided that the Client has followed all reasonable recommendations of the Company in relation to defending any judgment and on proof that the Savings are not recoverable. The Client shall have no right to reimbursement if a written notice of a claim under this clause is not received within 12 months of the Company submitting the Savings Statement detailing the relevant Saving or as otherwise agreed on a case by case basis and documented on a Savings Statement.
- 4.11 For the avoidance of doubt, where a project to which the Services relate is subsequently cancelled, deferred or significantly reduced in value by the Client and for which the Services have been performed or substantially performed by the Company, the Fee will be calculated on the Savings identified in any Savings Statement and the Company's invoice raised on submission of the Savings Statement.
- 4.12 The provisions of this clause 4 shall survive termination of this Agreement (howsoever arising).

5. Obligations of the client

- 5.1 The Client shall notify the Company promptly following (and in any event within 14 days of) any Saving being achieved, of the nature and amount of the Saving and provide such supporting information as the Company may reasonably request.
- 5.2 The Client shall during the Term and thereafter allow the Company, during the Client's normal business hours, such access to the Client's premises and the Client's information, records and other material relevant to the Services as the Company may reasonably require to perform the Services and/or to verify any achieved Saving. In addition, the Client shall:
- 5.2.1 advise the Company of the rules and regulation in force from time to time for the conduct of personnel at its premises in advance of such rules taking effect;
 - 5.2.2 make available such working space and facilities at its premises as the Company may reasonably require;
 - 5.2.3 make available appropriate personnel to liaise with the Company; and
 - 5.2.4 upon reasonable request, provide any financial, non-financial and supporting information in such format as the Company shall reasonably require to facilitate provision of the Services.
- 5.3 For the avoidance of doubt clauses 5.1 and 5.2 shall survive termination of this Agreement.

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6. Term and termination

6.1 This Agreement shall continue for the Initial Term and unless terminated by either party under clause 6.2 shall be renewed automatically for a period of 12 months on expiry of the Initial Term and each subsequent anniversary thereof until the fifth anniversary of the expiry of the Initial Term when the Agreement shall (unless agreed otherwise by the parties in writing) expire.

6.2 Either party may terminate this Agreement on the expiry of the Initial Term or any subsequent anniversary thereof by giving written notice to the other at least 12 months prior to the date on which the Initial Term or the subsequent anniversary thereof expires.

6.3 The termination of the Agreement and/or the provision of the Services howsoever arising shall be without prejudice to any provision expressed or intended to operate thereafter.

6.4 Without prejudice to the Company's rights to terminate the Agreement and/or the provision of the Services in accordance with the provisions of clause 6.5 below the Company shall at any time have the right at its discretion by giving 12 months' notice in writing to the Client to terminate all or any of its obligations to provide the Services and/or to seek to re-negotiate the Fee for the Services with the Client. If the parties are unable to agree such revised Fee, the Company may terminate the Agreement and the provisions of clause 6.6 shall apply.

6.5 Either party may terminate the Agreement and/or the provision of the Services forthwith by notice in writing to the other if:

6.5.1 the other commits a breach of the Conditions which in the case of a breach capable of remedy shall not have been remedied within 30 days of the receipt by the other of a notice from the innocent party identifying the breach and requiring its remedy. For the avoidance of doubt, where the Client, in the Company's reasonable opinion is in breach of the exclusivity provisions in clause 2.1, such breach shall not be capable of remedy; or

6.5.2 the other has a bankruptcy order made against it or makes an arrangement or composition with its creditors or otherwise takes the benefit of any statute for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of credits (whether formal or informal) or enters into liquidation (whether voluntary or compulsory), except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, manager, administrator or administrative receiver appointed over any of its assets, income or undertaking.

In the event of a breach by the Client of the Conditions, the Company may, at its discretion (but shall not be obliged to), offer to re-negotiate the Fee with the Client as an alternative to terminating this Agreement. Should the parties fail to agree such revised Fee, the Company may opt to terminate this Agreement in accordance with clause 6.5.1.

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6.6 Upon termination of this Agreement (for whatever reason):

6.6.1 the Company shall deliver to the Client a final Savings Statement; and

6.6.2 the Client shall remain liable to pay to the Company the Fee for Savings achieved after termination of the Agreement in accordance with clause 4.

6.7 However the Services are terminated; the Client shall promptly pay to the Company all third-party costs and all expenses of the Company reasonably and necessarily incurred in the performance of the Services.

6.8 Where the Service Agreement provides that more than one service is to be provided as part of the Services, the Company may (at its sole discretion) deliver a Savings Statement in respect of each particular service, or deliver one Savings Statement in respect of all the Services being provided.

6.9 If the Company terminates the Agreement as a result of the Client's breach of the exclusivity provisions set out in clause 2.1, the Company shall (without prejudice to its other rights and remedies) be entitled, at its discretion, to charge the Client for the Services at its then standard rate applicable to such Services or to recover such proportion of the Fee to which, in the Company's reasonable opinion (having regard to the circumstances) it would have been entitled had the Services been completed by the Company.

6.10 The Client acknowledges that the above provisions of this clause 6 are reasonable and reflected in the Fee which would be higher without those provisions, and the Client will accept such risk and/or insure accordingly.

7. Expert determination

7.1 The parties agree that any dispute which relates to the calculation or achievement of any Savings shall be referred for final determination to an independent expert (an "Expert") appointed in accordance with this clause 7.

7.2 The parties shall agree on the appointment of an Expert.

7.3 If the parties are unable to agree on an Expert within seven days of either party serving details of a suggested expert on the other, either party shall then be entitled to request The Institute of Chartered Accountants to appoint an Expert.

7.4 The Expert is required to prepare a written decision and give notice (including a copy) of the decision to the parties within a maximum of three months of the matter being referred to the Expert.

7.5 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:

7.5.1 either party may apply to The Institute of Chartered Accountants to discharge the Expert and to appoint a replacement Expert with the required expertise; and

7.5.2 this clause applies in relation to the new Expert as if he were the first Expert appointed.

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- 7.6 The parties are entitled to make submissions to the Expert including oral submissions and will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 7.7 To the extent not provided for by this clause, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate, including (to the extent he considers necessary) instructing professional advisers to assist him in reaching his determination.
- 7.8 Each party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel as the other party reasonably requires to make a submission under this clause.
- 7.9 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine whether the Savings identified in any Savings Statement are correct and the resultant Fee due to the Company. The Expert's written decision on the matters referred to him shall be final and binding on the parties in the absence of manifest error or fraud.
- 7.10 Each party shall bear its own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert shall be borne by the parties equally or in such other proportions as the Expert shall direct.

8. Force majeure

Neither party to this Agreement shall be liable to the other party in any manner whatsoever for any failure or delay or for the consequences of any failure or delay in performing any of its obligations under the Agreement if such failure or delay is due to any cause beyond that party's reasonable control and the party so failing or delayed shall be entitled to a reasonable extension of time for performing such obligations provided that lack of funds howsoever arising shall not be a cause beyond a party's reasonable control.

9. General

- 9.1 No waiver by the Company of any breach by the Client or any provision of the Agreement shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 9.2 If any provision of the Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the other provisions of the Agreement remain in full force and effect.

10. Notice

All notices to be given under the Agreement shall be in writing and shall be sent to the respective addressed of the Client and the Company given in the Service Agreement or to such other address as may be notified by either party to the other from time to time.

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11. Entire agreement

- 11.1 The Agreement contains the entire agreement between the parties with respect to the Services and supersedes and replaces all prior communications, drafts, agreements, warranties, stipulations, undertakings and agreements of whatsoever nature, whether oral or written, between the parties relating to the Services.
- 11.2 Each party acknowledges that it has not relied upon any representation, warranty, promise or assurance made or given by the other party which is not expressly set out in the Agreement, provided that this shall not exclude any liability which a party would otherwise have to the other in respect of any statements made fraudulently.

12. Confidentiality

- 12.1 The Client agrees to keep confidential any and all information provided to it by the Company which is of a confidential nature (with the exception of the information referred to in clause 12.2), including but not limited to the Savings Statement, the terms of this Agreement and the methodologies which are used by the Company in carrying out the Services ("Confidential Information"). The Client shall not acquire any rights in such methodologies or be entitled to call for detailed explanations of such methodologies. In addition, the Client acknowledges that the Services are provided to it for its exclusive benefit and shall not disclose the Confidential Information to any third party without the prior written consent of the Company which shall not be unreasonably withheld. In the event of a third party claim against the Company as a result of a breach of this clause by the Client, the Client shall indemnify the Company against all liability, actions, proceedings, costs, claims, damages or demands brought or threatened to be brought against it by any such third party, howsoever arising.
- 12.2 The obligations set out in clause 12.1 shall not apply to any information which is publicly available or which becomes publicly available through no act or omission of the Client or which the Client is required to disclose by order of a court or other authorised body of competent jurisdiction.

13. Joint and several

Where the Client is more than one person the liability of such persons under the Agreement shall be joint and several.

14. Assignment

The Company shall be entitled to assign the benefit and/or burden of the Agreement.

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15. Lien

Without prejudice to any lien to which the Company may be entitled by law, the Company shall have a general lien over any papers in its possession belonging to the Client, or for which the Client is entitled to call, for payment of the Fee and/or the Company's charges under any other agreement between the Company and the Client.

16. Rights of third parties

The Contracts (Rights of Third Parties) Act 1999 shall apply to the benefit conferred or purported to be conferred on the employees, agents and sub-contractors of the Company in respect of the exclusions and limitations set out in clause 3 of these Conditions. Except as stated in this clause 16, the Company and the Client do not intend that any of the provisions of the Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to the Agreement.

17. Law and jurisdiction

The Agreement shall be governed by English law. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Agreement.