

## General Terms and Conditions HumanCapitalCare

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### I. GENERAL

#### 1. Definitions

In these General Conditions the following definitions apply:

- **HumanCapitalCare:** the private company with limited liability under Dutch law HumanCapitalCare Company B.V., according to its articles of association having its registered office in Eindhoven, the Netherlands, as well as its affiliated companies and other legal entities jointly connected in a group as referred to in Article 2:24b of the Dutch Civil Code.
- **Services:** the services and/or activities in the field of integral health management, prevention, absenteeism, interventions and/or reintegration to be provided and performed by HumanCapitalCare under an Agreement for and on behalf of Principal or a Third Party designated by Principal.
- **Principal:** the natural person or legal entity with which HumanCapitalCare has concluded an Agreement.
- **Agreement:** the Agreement between HumanCapitalCare and Principal in respect of the provision of the Services, as laid down in one or more appendices agreed by the Parties.
- **Party / Parties:** HumanCapitalCare and/or Principal.
- **Third Parties:** any other persons than those mentioned in the Agreement, unless a Clause directly requires otherwise.
- **Software:** the software application(s) we-care, eecare, EDI-care, RIE-Manager, my-care, med-care, and any other software applications developed by IT&Care B.V., which either jointly or separately may be part of the Services or comprise the entire Services. The software applications jointly form a "software as a service" solution for integral health management.
- **Intervention(s):** an early and adequate intervention by HumanCapitalCare or a Third Party in case of identified complaints causing the absenteeism of an employee of Principal, as well as the prevention of absenteeism by means of offering special forms of (preventive) therapies and other resources, which all are aimed at speeding up the return of Principal's employee to his (own) work or at the prevention of absenteeism.
- **In writing / written:** by (registered) letter, fax, email or - insofar agreed by the Parties - in a different electronic form or manner.

#### 2. Applicability

**2.1** These General Conditions apply to every offer of HumanCapitalCare and to every Agreement that is concluded between the Parties.

**2.2** Any general conditions of Principal and/or of Third Parties shall only apply if it has expressly been agreed in writing that those general conditions will to the exclusion of these General Conditions apply to the Agreement between the Parties, and will then only apply to the Agreement to which the acceptance relates.

**2.3** These General Conditions shall also apply towards and in respect of any Third Parties engaged by HumanCapitalCare in the performance of the Agreement. In their relationships with Principal said Third Parties may directly refer to and invoke these General Conditions.

**2.4** Deviations from these General Conditions shall exclusively apply if and insofar as those deviations have been accepted by HumanCapitalCare in writing, and shall only apply to the Agreement to which the acceptance relates. In the event of deviations from one or more provisions of these General Conditions, the other provisions of these General Conditions shall remain in full force and effect.

**2.5** If HumanCapitalCare fails or has failed to exercise one or more of its rights accruing to it on the basis of these General Conditions in full or at all, Principal cannot derive any rights from that.

#### 3. Offers

**3.1** Offers of HumanCapitalCare shall only be binding if and insofar as they have been made in writing.

**3.2** Offers of HumanCapitalCare shall be valid for 2 months as from the offer date, or in deviation therefrom, for the term provided in the offer letter.

**3.3** HumanCapitalCare shall not be liable for any apparent mistakes or errors in calculations, price lists or other documents originating from Principal and/or Third Parties relating to the offer.

#### 4. Conclusion of Agreement

**4.1** An Agreement shall not be concluded until the integral written acceptance of the offer of HumanCapitalCare by Principal. HumanCapitalCare shall not be obliged to provide Services to Principal until after the Agreement has been concluded.

**4.2** Conditional acceptance of an offer shall be considered to be a new offer of Principal, and a rejection of the original offer of HumanCapitalCare. If the response of Principal that is intended to be an acceptance of the offer deviates from the offer made by HumanCapitalCare only on minor points, the response of Principal shall be considered an acceptance and the Agreement shall be concluded in accordance with the acceptance by Principal, unless HumanCapitalCare objects to the deviations immediately.

**4.3** HumanCapitalCare shall have the right to refuse a direct commission or not to accept a counter offer. A direct commission or counter offer shall be accepted by HumanCapitalCare by means of a written order confirmation to Principal.

**4.4** HumanCapitalCare shall have the right, when or after concluding the Agreement and prior to (further) performance, to require from Principal to provide a guarantee or security that all obligations, including payment obligations, will be met.

#### 5. Amendment and Cancellation of the Agreement

**5.1** Amendment and cancellation of the Agreement, for whatever reason, shall take place by registered letter to HumanCapitalCare and shall be subject to its written approval. If the Agreement has been concluded electronically, amendments or cancellation by email or other electronic means shall be permitted.

**5.2** Amendments or supplements to the Agreement shall be binding only insofar as they have been agreed in writing and have been approved by the Parties.

**5.3** In case of cancellation of the Agreement by Principal, it shall be liable for damages in respect of any costs incurred and losses of profits caused to HumanCapitalCare.

**5.4** If changes in any laws or regulations otherwise imposed by the government or trade authorities result in new obligations for the Parties, those new obligations shall be deemed to be part of the Agreement. The Parties shall in that case consult each other regarding the costs arising therefrom for the Parties.

#### 6. Term and Termination of the Agreement

**6.1** The Agreement shall be entered into for the duration of the term mentioned in the Agreement. If no specific term/duration/project is mentioned in the Agreement, the Agreement shall be deemed to have been entered into for an indefinite period of time.

**6.2** The Agreement may be cancelled by the Parties by means of a registered letter. If the Agreement has been concluded electronically, cancellation by email or other electronic means shall be permitted.

**6.3** Cancellation of an Agreement that has been entered into for a fixed term shall be subject to a three-month notice period, unless agreed otherwise. Cancellation of an Agreement that has been entered into for a fixed term may take place after 1 full contract year and as per the end of each subsequent contract year, subject to a three-month notice period. The cancellation will be confirmed by HumanCapitalCare to Principal in writing.

**6.4** If an Agreement that has been entered into for a fixed term has not been cancelled in accordance with the Clauses 6.2 and 6.3, the Agreement shall be tacitly extended by the same period of time and under the same conditions, with exception of the amounts of the rates and/or prices insofar as HumanCapitalCare wishes to modify them as referred to in Clause 11.7.

**6.5** If HumanCapitalCare increases the rates by more than 5.0% compared to the rates in the current contract year as referred to in Clause 11.7, Principal shall have the right to prematurely cancel the Agreement, effective at the beginning of the contract year to which the rates and/or price increase relates and in accordance with the provisions of Clause 6.6.

**6.6** Cancellation by Principal in accordance with the provisions of Clause 6.5 shall take place within 1 month after Principal has been notified by HumanCapitalCare in writing of the rate increase. A cancellation shall not be effective if HumanCapitalCare reduces the interim rate increase to the percentage referred to in Clause 6.5 after that cancellation, and notifies Principal thereof in writing within 1 month after receipt of the notification of the cancellation by Principal.

#### 7. Performance of the Agreement

**7.1** The scope of the Agreement is determined by the Services specified in the Agreement and appendices.

**7.2** Providing Software may be part of or comprise the entirety of the Services. In those cases the provisions of these General Conditions under Part II. SUPPLEMENTARY SOFTWARE CONDITIONS shall also apply.

**7.3** Intervention(s) may be part of the Services. Intervention shall only take place with the consent of Principal and the relevant employee. Where necessary consultation will also take place with the medical agencies and institutions and the insurance company. HumanCapitalCare cannot guarantee that the Intervention will be successful, but will use its best efforts within the actual possibilities.

**7.4** The provision of the Services shall start at the commencement date mentioned in the Agreement, after receipt of the registration form that has been signed by Principal, provided that Principal has complied with all requests of HumanCapitalCare for information concerning the staff employed. With respect to any new employees of Principal the provision of the Services shall start after all relevant information and data of the new employee(s) have been received by HumanCapitalCare.

**7.5** HumanCapitalCare shall perform the provision of Services with all due care and in accordance with the specific expertise that can be expected from it in the given circumstances, and in compliance with the applicable laws and regulations. Despite the reciprocal best efforts of the Parties, HumanCapitalCare can never guarantee that the result expected by Principal and/or HumanCapitalCare will be achieved. HumanCapitalCare shall only have an obligation to use its best efforts and to perform to the best of its ability.

**7.6** In the performance of the Services HumanCapitalCare is subject to the protocols, guiding principles, instructions and directives drawn up by the industry and professional organizations that apply to the activities.

**7.7** HumanCapitalCare offers continuity of Services. If an employee of HumanCapitalCare who is involved in the execution of the Services is absent, HumanCapitalCare shall within a period that is reasonable in the given circumstances provide a replacement employee.

**7.8** Insofar as no periods have been mentioned in the Agreement, HumanCapitalCare shall provide the Services within its customary periods.

**7.9** HumanCapitalCare shall carry out the Services from one or more branch offices of HumanCapitalCare. The Services may also be provided at the location of Principal, if and insofar as this has been agreed in writing and subject to the condition that Principal will free of charge make a workplace available that meets the requirements that HumanCapitalCare may reasonably demand, and working conditions that meet the requirements of Article 7:658 of the Dutch Civil Code. In addition to that Principal shall indemnify HumanCapitalCare against any claims on account of or in connection with any failure to comply with the above duty of care.

**7.10** If necessary for the performance of the Services, HumanCapitalCare shall without permission of Principal be permitted to access buildings, premises and other locations of Principal.

**7.11** In case of a direct threat for an employee of HumanCapitalCare during the performance of the Services, HumanCapitalCare shall be authorized to immediately suspend the provision of the Services until the moment that Principal in consultation with and with approval of HumanCapitalCare has taken the measures required to remove the threat and to prevent that threat from occurring in the future. HumanCapitalCare reserves the right to terminate the provision of the Services if the threat continues to exist after the measures have been taken, or is so serious that continuation of the provision of the Services cannot be required from it.

**7.12** HumanCapitalCare may in consultation with Principal engage Third Parties in the performance of the Agreement. Third Parties shall be obliged - beside the quality standards that apply to them as part of their own professionalism or occupation - to comply with the quality standards of HumanCapitalCare. HumanCapitalCare shall not be liable for any damage resulting from any failures in the performance of those Third Parties, save in case of intent or gross negligence on the part of HumanCapitalCare. Any costs connected to involving Third Parties shall be charged to Principal.

**7.13** HumanCapitalCare may carry out or have others carry out extra activities under the original conditions of the Agreement if:

- those activities in the opinion of HumanCapitalCare are necessary for the performance of the Agreement, and/or
  - the need thereof has become clear after the conclusion of the Agreement.
- HumanCapitalCare shall inform Principal immediately of the nature of and fee for these activities.

**7.14** Principal shall be permitted to cancel the Services in writing in the following cases only:

- voluntary contacts established by individual employees (including also the working conditions consulting hours), contacts on instruction of Principal concerning individual employees (including also absenteeism consulting hours) and Preventive Medical Examinations (PMEs) up to 3 working days before commencement;
- in accordance with relevant arrangements made by the Parties in the Agreement.

**7.15** Prevention, non-response or the failure to appear (in a timely fashion) by an employee of Principal shall be at the risk of Principal.

## **8. Obligations of Principal**

**8.1** Principal shall in a timely fashion and upon request of HumanCapitalCare make available to HumanCapitalCare all information required for the performance of the Agreement, and shall comply with all reasonable instructions of HumanCapitalCare regarding that. Principal shall see to it that the provided information is correct and complete.

**8.2** Principal shall to the best of its ability cooperate in repairing and/or adjusting errors and/or ambiguity in the information required for the performance of the Agreement.

**8.3** Principal shall bear the risk of any confusion with respect to the contents and performance of the Agreement if caused by information that is incorrect, incomplete or has not been received by HumanCapitalCare in time.

**8.4** If Principal electronically provides confidential or sensitive information to HumanCapitalCare, Principal shall use a secured connection or environment. If Principal chooses unsecured electronic transmission, this shall fully be at the risk and for the account of Principal.

**8.5** Principal shall be obliged to inform its employees of their rights and obligations within the framework of the Working Conditions Act and the statutory rules and regulations concerning incapacity for work and incapacity for work benefits. Furthermore Principal shall take it upon itself to impose the obligatory sick and recovery reporting procedures, as well as the obligations in case of incapacity for work, upon its employees in the form of regulations. The consequences of any failure of employees of Principal to comply with their obligations concerning the above cannot be held against HumanCapitalCare, and HumanCapitalCare accepts no liability whatsoever in respect thereof.

**8.6** Principal shall be responsible for consultation with its works council, staff representation or co-administration council, and shall obtain its approval as required within the framework of the Works Councils Act and the Working Conditions Act.

**8.7** If Principal fails to provide the information referred to in this Clause in a timely fashion, or fails to follow any instructions of HumanCapitalCare (in a timely fashion), or fails to provide its assistance, HumanCapitalCare shall have the right to suspend the performance of the Agreement and to charge to Principal the costs and/or damage resulting from the delay in accordance with the usual rates. In case of proven inconsistencies, HumanCapitalCare shall have the right to apply a correction on the (subscription) fee.

## **9. Confidentiality**

**9.1** HumanCapitalCare shall treat all information concerning the company, management, working conditions, personal data of employees of Principal and any other information that HumanCapitalCare obtains concerning Principal in the performance of the Agreement as confidential, and shall refrain from providing that information to Third Parties, save if and insofar as HumanCapitalCare:

- is required to do so under a legal provision, or
- has been granted permission to do so by Principal, or
- provides the information to the Statistics Netherlands for statistical research purposes.

**9.2** HumanCapitalCare shall impose a confidentiality obligation as referred to in Clause 9.1 on all its employees and Third Parties engaged. Moreover the BIG-registered experts working for or on behalf of HumanCapitalCare shall be subject to the medical confidentiality that applies to them.

**9.3** In case of contracted working conditions consulting hours (open and voluntary consulting hours), either in or outside one of the branch offices of HumanCapitalCare, HumanCapitalCare shall in accordance with the applicable legal rules and regulations observe and maintain complete anonymity of the employee of Principal, unless that employee gives his express permission to HumanCapitalCare to make his identity known to Principal.

**9.4** HumanCapitalCare shall keep and maintain an occupational health file of the employees of Principal for absenteeism counselling, reintegration, prevention and working conditions counselling, in accordance with the Medical Treatment Agreements Act and the provisions of Clause 7.6.

**9.5** Beside the authorized persons engaged by HumanCapitalCare, only the employee himself shall be authorised to inspect his occupational health file. A third party can only be given permission to inspect (part of) that file if that third party can produce an authorization granted by the relevant employee specifically for the relevant situation, or based on a statutory regulation.

**9.6** HumanCapitalCare shall have the right to publish about the Services provided to Principal and to give public presentations about them. HumanCapitalCare shall in those cases guarantee the privacy of (employees of) Principal.

**9.7** Principal shall without permission of HumanCapitalCare refrain from making available to Third Parties any reports drawn up by HumanCapitalCare, and from making any statements to Third Parties concerning the manner in which HumanCapitalCare carries out the Services.

**9.8** The confidentiality obligation as referred to in this Clause shall apply until 2 years after the end date of the Agreement.

## **10. Handling Personal Data**

**10.1** The Parties shall comply with all their obligations under the General Data Protection Regulation ('GDPR') and all other applicable privacy laws and regulations in connection with the Agreement.

**10.2** In order to ensure the proper processing of personal data, a Data Processing Agreement will be entered into.

## **11. Rates**

**11.1** All rates mentioned by HumanCapitalCare are expressed in Euro, exclusive of VAT and any other levies imposed by the government.

**11.2** Unless agreed otherwise in writing, office expenses, travel hours, travel and accommodation expenses and other costs connected with the commission shall not be included in the rates, and those costs shall always be charged to Principal separately and moreover be increased by costs of Third Parties.

**11.3** If HumanCapitalCare has to incur costs as a result of incorrect or incomplete information provided by Principal, those costs shall be borne by Principal.

**11.4** HumanCapitalCare shall be authorized to charge the compensation for additional services described in Clause 7.13 to Principal at rates that apply at that time.

**11.5** In case of cancellation of the Services by Principal, Principal shall, save in case of the exceptions mentioned in Clause 7.14, owe to HumanCapitalCare the agreed fee and the costs in connection therewith.

**11.6** If, after termination of an Agreement, HumanCapitalCare is forced to coach a (former) employee of Principal with respect to absenteeism and/or reintegration, Principal shall owe to HumanCapitalCare a fee in accordance with the rates agreed.

**11.7** HumanCapitalCare shall be authorized to increase the rates on 1 January of each year, for which the price index rates of the Dutch Health Care Authority and the Statistics Netherlands will be used as a guideline. Principal shall be notified of this change in rates by HumanCapitalCare in writing no later than 1 month before the end of each calendar year.

## **12. Basis of the Rates**

**12.1** The rates shall be based on written arrangements between the Parties, which may include that rates are based on a) the number of employees employed by Principal, b) the percentage of sickness absenteeism, and/or c) the sickness reporting frequency.

**12.2** If the rates are based on the provisions of Clause 12.1 sub a, Principal shall be obliged upon request of HumanCapitalCare to state the correct number of employees who worked for Principal in the preceding calendar year. This information shall be the basis for the invoicing in the subsequent period.

**12.3** In Clause 12.2 the term "employee" shall mean persons who have concluded an employment agreement with Principal (irrespective of the number of hours per week) or who are flex workers (including stand-by and holiday workers).

**12.4** If the rates are based on the provisions in Clause 12.1 sub b, the term "absenteeism percentage" shall mean the total number of absented calendar days over the preceding 12 calendar months expressed as a percentage of the total number of available calendar days of all employments, one week being equal to 7 days. If the absenteeism percentage over the year before the Agreement was concluded is unknown, the average absenteeism percentage in the branch of industry of Principal shall be taken as point of departure, and if that is not known either, the average absenteeism percentage in that branch of industry as known at the relevant benefits agency.

**12.5** If the rates are based on the provisions in Clause 12.1 sub c, the term "sickness report frequency" shall mean the total number of absenteeism reports over the preceding 12 calendar months as a percentage of the total number of employees in the same period. If the sickness report frequency over the year before the Agreement was concluded is unknown, the sickness report frequency will be determined by HumanCapitalCare.

## **13. Invoicing**

**13.1** If Principal uses the Services on a subscription basis, invoicing will take place prior to each calendar year on the basis of the total number of employees stated by Principal. If during the course of a year mutations of more than 10% in the total number of employed staff occur, a subsequent calculation and a correction invoice will follow. Subsequent calculation shall take place at the beginning of each new year, on the basis of the rounded off average number of employees, the sick report frequency and the sickness absenteeism percentage, as these appear from the absenteeism statistics of HumanCapitalCare.

**13.2** Invoicing of all other Services shall take place at the end of each month in which the Services have been provided.

**13.3** Payment of invoices shall take place within 14 days of invoice date on a bank account specified by HumanCapitalCare, without any right to setoff by Principal.

**13.4** If in the opinion of HumanCapitalCare the credit rating of Principal requires, HumanCapitalCare shall be authorized to reduce the term of payment and/or demand further security.

**13.5** In case of non-observance of the term of payment, Principal shall be in default without any notification of default being required. Principal shall in that case as from the payment due date immediately be due an interest on the outstanding amounts of 1% per month, or the legal (commercial) interest if that is higher, part of a month being considered one entire month, without prejudice to the right of HumanCapitalCare to claim damages and any further rights accruing to it. In addition all reasonable costs incurred by HumanCapitalCare for collection of the amount due by Principal, both judicial and extrajudicial costs (including the costs of both internal and external legal assistance), shall be borne by Principal, which costs shall at least be 15% of the principal amount due with a minimum of EUR 160.00.

**13.6** Each payment of Principal shall first be applied to costs, subsequently to accrued interest and finally to the principal amount.

**13.7** If a suspension of payments is granted to Principal, if it is declared bankrupt or if it terminates its enterprise, all claims of HumanCapitalCare on Principal shall become immediately due and payable and Principal cannot invoke setoff.

**13.8** Principal can never demand any compensation or discount with respect to the amounts due by Principal to HumanCapitalCare, unless expressly agreed otherwise in writing.

**13.9** As from the moment that Principal on the basis of the provisions of Clause 13.5 is in default, HumanCapitalCare shall have the right to suspend the Services agreed or

to rescind the Agreement. Suspension of Services shall not prejudice or affect the obligation of Principal to pay the outstanding invoices, and shall not cause any liability for damage on the part of HumanCapitalCare.

#### 14. Payment

**14.1** If Principal disputes the correctness of (any part of) an invoice, Principal shall nevertheless be required to pay the undisputed part, and Principal shall object to the invoice no later than 14 days of invoice date in writing stating its reasons. If and insofar as the disputed part appears to be due, the original invoice date applies and Principal will therefore from that moment be liable for (legal) (commercial) interest as referred to in Clause 13.5.

**14.2** Save in case of objection to (any part of) the invoice as described in Clause 14.1, Principal shall not have the right to suspend or set-off payment of any amounts due to HumanCapitalCare.

#### 15. Rescission

**15.1** An Agreement may be rescinded by both Parties with immediate effect, by means of a registered letter and without intervention of the courts being required and without ensuing liability for damages, in case:

a) one of the Parties, despite reminders stating a reasonable period for subsequent performance, imputably fails to comply or fails to comply in a timely fashion or fails to properly comply with any (payment) obligation resulting from the Agreement;

b) of suspension of payment, an application for (provisional) suspension of payment, of bankruptcy, administratorship or liquidation or discontinuation of the enterprise of that Party, or if said party otherwise loses the free disposal over its assets.

**15.2** If a situation as referred to in Clause 15.1 sub b occurs or threatens to occur the Party concerned shall be required to notify the other Party thereof forthwith.

#### 16. Force Majeure

**16.1** If a Party cannot perform its obligations or should reasonably expect that it will not be able to perform its obligations on account of force majeure, said party shall notify the other Party thereof in writing forthwith, stating the reason and consequences of any (imminent) delays and the measures which it will take to limit the delay and to prevent such a delay to occur in the future.

**16.2** "Force majeure" shall mean, in addition to what is stipulated about that in law and case law, any external causes beyond the control of a Party, both foreseen and unforeseen, as a result of which that Party is not able to comply with its obligations.

**16.3** Any failures of HumanCapitalCare in the performance of the Agreement cannot be attributed to it if they were not due to its own fault and were not the responsibility of said party by virtue of the law, the Agreement or generally accepted views.

**16.4** Any failures of HumanCapitalCare in the performance of the Agreement as a result of war, mobilization, riots, flood, stagnations or restrictions in or discontinuation of the supply by public utility companies, fire, mechanical failures and other accidents, shall be qualified as being not attributable to HumanCapitalCare, and shall not give Principal the right to rescind the Agreement or any entitlement to damages.

**16.5** The Party that invokes force majeure shall be required, insofar as this lies in its power, to (have others) remedy the cause of force majeure as soon as possible.

**16.6** In case of force majeure HumanCapitalCare shall have the right suspend the Agreement (or part thereof) for as long as the cause of force majeure prevents the performance by HumanCapitalCare, without Principal being able to claim damages and/or to terminate the Agreement with immediate effect. In such case HumanCapitalCare shall notify Principal thereof in writing.

**16.7** If HumanCapitalCare, once force majeure commences, is able to perform part of its obligations, it shall have the right to separately invoice the part that has already been carried out or can be carried out. Principal shall be required to pay this invoice.

**16.8** If, during a period of more than 3 months, a Party is not able to perform the obligations arising from the Agreement due to force majeure, or from the moment that it is certain that the force majeure situation will last longer than 3 months, the other Party shall have the right to rescind the Agreement with immediate effect without being required to declare the Party to which force majeure applies in default, and without ensuing liability for damages between the parties on account of this.

#### 17. Liability

**17.1** The liability of HumanCapitalCare on account of an attributable failure in the performance of an Agreement or resulting from tort shall be limited to compensation of the direct damage caused to Principal.

**17.2** HumanCapitalCare shall under no circumstances be liable for any operating damage, consequential damage or other indirect damage, including damage due to loss of profits, salary payments to employees, premium increases of public and/or private insurances, missed savings, loss of data or information and business interruption.

**17.3** The liability of HumanCapitalCare for any direct damage caused by an attributable failure in the performance of an Agreement or resulting from tort shall be limited to the entire amount of fees invoiced to Principal during the 12 calendar months preceding the notice of liability, with a maximum of EUR 25,000.00 (in words: twenty-five thousand Euro) per event, in which a series of interconnected events is considered to be one single event. If the attributable failure in the performance or the tort lies in the field of absenteeism and reintegration, the liability of HumanCapitalCare shall be limited to the entire amount of fees invoiced to Principal for those services, in which case the maximum of EUR 25,000.00 (in words: twenty-five thousand Euro) per event applies in full.

**17.4** The liability of HumanCapitalCare for damage caused by physical injury or death of employees of Principal as a direct consequence of professional errors, if and insofar as that failure in the performance could have been prevented under the given circumstances and in case of normal expertise and attention, shall be limited to EUR 50,000.00 (in words: fifty thousand Euro) per event per year, in which a series of interconnected events is considered to be one single event.

**17.5** Principal shall hold HumanCapitalCare liable in writing within 1 month after it has become aware or should reasonably have become aware of the facts on which liability is based, for the damage that has been and will be caused to Principal, in which case HumanCapitalCare must first be declared in default, and be given a reasonable period to remedy the failure in the performance, and HumanCapitalCare has failed to remedy the failure in the performance.

**17.6** HumanCapitalCare shall under no circumstances be liable for damage resulting from any incorrect, incomplete, late or premature sick and recovery reports by HumanCapitalCare issued to Third Parties on instruction of Principal.

**17.7** HumanCapitalCare shall secure its data files properly but shall not be liable for any distortions, deletions or supplementations of data by unauthorized Third Parties that have accessed its system. If HumanCapitalCare for the Agreement with Principal uses telecommunication and Internet facilities, and if distortion of data or delay of transmission occurs during data transfer, HumanCapitalCare shall be liable only for the damage caused by that insofar as that damage can be recovered from the supplier(s) of the telecommunication and/or Internet facilities.

**17.8** In case of verbal or telephone communications between the Parties, HumanCapitalCare shall not be liable for any damage resulting from any misunderstandings or any incorrectly transmitted information. As for proof, a record drawn up by HumanCapitalCare of a request (for inspection) by telephone shall be deemed to be equal to a written request (for inspection) by Principal.

**17.9** The digital communication and data transfer at HumanCapitalCare runs via mainland lines. If the connection in spite of the uptime guarantee of the supplier(s) of HumanCapitalCare is down for a longer time due to destruction, failure of the lines or any other causes, HumanCapitalCare can never be held liable for any form of damage, including supplementary damages in whatever form, compensation of indirect or consequential damage or damage on account of loss of turnover or loss of profits. HumanCapitalCare shall at all times use its best efforts in association with the supplier to restore the connection.

**17.10** Without prejudice to the provisions of these General Conditions, the liability of HumanCapitalCare for whatever reason shall at all times be limited to the amount that HumanCapitalCare receives under any insurances taken out by it, including any deductible that applies to HumanCapitalCare in the case concerned.

**17.11** The liability limitations laid down in this Clause shall not apply if and insofar as the damage is caused by intent or gross negligence of HumanCapitalCare.

**17.12** If Principal suffers damage that is covered by its insurance, HumanCapitalCare shall never be liable for that damage.

#### 18. Intellectual Property

**18.1** Each Party shall remain the proprietor of any intellectual property rights that it already possessed prior to its contractual relationship with the other Party or that have been developed by it outside and independently from that contractual relationship.

**18.2** Principal guarantees to HumanCapitalCare that the performance of the Agreement and/or the disclosure of information/items received from Principal does not infringe on any rights of Third Parties.

**18.3** HumanCapitalCare shall be the owner and proprietor of all intellectual property rights that result from the provision of Services on the basis of the Agreement. Those rights of HumanCapitalCare shall under and by the Agreement with HumanCapitalCare be transferred at the moment of their creation, and Principal will grant its collaboration to all actions and procedures that HumanCapitalCare reasonably considers to be necessary to effectuate the transfer of the ownership of the above intellectual property rights.

**18.4** In accordance with the provisions of Clause 9 HumanCapitalCare may publish about the activities performed under the Agreement, and it shall have the right to use the services it has developed and performed as promotion material towards Third Parties.

**18.5** Principal shall - in consultation with HumanCapitalCare - for its own account do and/or omit all that which is advisable and/or necessary to establish and protect the intellectual property rights of HumanCapitalCare.

**18.6** HumanCapitalCare shall not be liable for any infringements of rights of Third Parties, unless in case of an infringement committed by HumanCapitalCare itself of rights of which the existence is generally known, or was known to HumanCapitalCare at the moment of the infringement.

#### 19. Indemnification

**19.1** Principal shall indemnify HumanCapitalCare against any claims that any Third Party may bring or enforce in connection with intellectual property rights regarding data, products etc. provided to HumanCapitalCare by Principal in connection with the Agreement.

**19.2** If HumanCapitalCare is held liable by a Third Party, including employees of Principal, for any damage for which it is not liable under the Agreement with Principal or these General Conditions, Principal shall indemnify HumanCapitalCare in respect thereof in full, and shall compensate to HumanCapitalCare all that which HumanCapitalCare has to pay to that Third Party, as well as the costs that HumanCapitalCare incurs as part of the settlement of said liability claim.

#### 20. Non-solicitation

**20.1** Principal shall refrain from entering into a contractual relationship with employees of HumanCapitalCare who have provided Services to Principal during the term of the Agreement and during a period of 1 year after termination of the Agreement, and from having these employees carry out any activities in any other manner for HumanCapitalCare, and from negotiating with those employees for that purpose, all this both directly and indirectly and whether or not against payment, otherwise than with the express and written permission of HumanCapitalCare.

**20.2** For each violation of the provisions of Clause 20.1, Principal shall forfeit to HumanCapitalCare an immediately due and payable penalty in the amount equal to the highest rate per hour that applies to the position of the relevant employee, stated on the price list of HumanCapitalCare that applies at that time, multiplied by the number 2,080 (being 52 weeks of 40 hours per week), without prejudice to the right of HumanCapitalCare to claim full damages from Principal, and, if the Agreement continues, to terminate the Agreement effective immediately.

#### 21. Assignment Rights

**21.1** The Parties shall not have the right to assign or transfer their rights and/or obligations under or arising from an Agreement to Third Parties without the prior written permission of the other Party.

**21.2** Irrespective of the provisions of Clause 21.1, HumanCapitalCare shall not need the prior written permission of Principal to assign or transfer the rights and obligations under and arising from the Agreement to a company within the group to which HumanCapitalCare belongs.

## **22. Governing Law and Competent Court**

**22.1** Each Agreement between HumanCapitalCare and Principal shall be governed by Dutch law exclusively.

**22.2** Any disputes that may arise in connection with an Agreement, shall in principle be submitted to the jurisdiction of the competent court in 's-Hertogenbosch, the Netherlands. In addition HumanCapitalCare shall have the right to instigate legal proceedings before the courts in the place where it has a branch office.

## **23. Changes of these General Conditions**

**23.1** HumanCapitalCare reserves the right to change or supplement these General Conditions (unilaterally) at any time.

**23.2** Changes shall also apply with respect to Agreements that have already been concluded, subject to a term of 30 days after written notification of the changes.

**23.3** If in a court ruling any provision of these General Conditions is declared to be invalid, the other provisions of these General Conditions shall continue to be in full force and effect, and HumanCapitalCare and Principal shall mutually consult in order to formulate a new provision to replace the void or nullified provision, which will match the intention and meaning of the void or nullified provision as much as possible.

## **II. SUPPLEMENTARY SOFTWARE CONDITIONS**

### **24. Use of Software**

**24.1** The provisions of this Clause shall apply both to the provision of Services of which the making available of Software is a part, and to Services that only consist of making Software available.

**24.2** In the Agreement HumanCapitalCare may grant to Principal a non-exclusive and non-transferable right to use the Software for the duration of the Agreement at a fixed price per employee. The other conditions subject to which the software is made available to Principal have been provided in the Agreement.

**24.3** All data added by Principal via the Software shall be and remain the property of Principal.

**24.4** In case of termination of the Agreement the access to the Software for Principal shall immediately be blocked.

**24.5** Principal may up to at most 3 months after the termination of the Agreement submit a written request for transfer of the data from the Software. If Principal submits no timely or written request for transfer of said data, HumanCapitalCare shall apply the legal retention periods, after expiry whereof the data will be removed from the infrastructure of HumanCapitalCare. If no legal retention periods apply, or if these do not apply to HumanCapitalCare, HumanCapitalCare shall be permitted to remove the data at any time.

**24.6** After receipt of the written request of Principal for transfer of data from the Software, HumanCapitalCare shall as soon as possible, but at the latest within 1 month after that request, in text format transfer to Principal all data added by Principal via the Software. HumanCapitalCare shall as then remove the data from its infrastructure immediately. If Principal wishes to receive the data in a different format, the Parties shall mutually consult on any additional costs.

**24.7** The provisions of the Clauses 24.5 and 24.6 shall not apply to the data stored in the my-care Software application. That data is reserved for the individual employee of Principal and/or HumanCapitalCare.

### **25. Liability**

**25.1** Any liability of HumanCapitalCare for any damage caused to Principal due to the use of the Software is expressly excluded.

**25.2** Insofar as HumanCapitalCare, in spite of the provision of Clause 25.1, is nevertheless liable for damage caused to Principal, beside the provisions of this Clause the provisions of Clause 17 shall apply.

**25.3** Principal shall indemnify HumanCapitalCare against any claims of persons whose Personal Data have been registered or are processed as part of the registration of Personal Data by Principal or for which Principal is otherwise responsible on the basis of the law, unless Principal proves that the facts underlying the claim must be solely attributed to HumanCapitalCare.

**25.4** The responsibility for the data stored and processed by Principal during use of the Software, save for the software application my-care, shall reside with Principal exclusively. Principal guarantees to HumanCapitalCare that the content, use and/or processing of Personal Data is not unlawful and does not infringe on any rights of Third Parties. Principal shall indemnify HumanCapitalCare against any action brought by Third Parties for whatever reason, in connection with the data or performance of the Agreement.

### **26. Deactivation**

**26.1** HumanCapitalCare shall have the right to temporarily deactivate any Products delivered and Services provided, and/or to limit the use thereof if Principal does not comply with any obligation under Agreement towards HumanCapitalCare, or contravenes with these General Conditions. HumanCapitalCare shall notify Principal thereof in advance, unless this cannot be reasonably required from HumanCapitalCare. The obligation to pay any amounts due shall continue to exist during deactivation.

**26.2** The deactivated Products and Services shall be reactivated if Principal within a period set by HumanCapitalCare has performed its obligations and has paid the fee for reactivation.

**26.3** HumanCapitalCare shall have the right to temporarily deactivate Products delivered and Services provided for maintenance purposes.

These General Conditions are in both Dutch and English. In the event of any discrepancy between the Dutch and English version, the Dutch version shall prevail.

Son, the Netherlands, February 2020