

Brachers

Brachers HR Portal Agreement

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1. CONTRACT DETAILS

Contract Date	
Law Firm:	Brachers LLP (CRN: OC336022)
Law Firm's Registered Address	Somerfield House, 59 London Road, Maidstone, Kent, ME16 8JH
Provider	Eledecks (CRN 05320438) Limited 14 Phoenix Park, Telford, Coalville, Leicestershire LE67 3HB
Client	
Client's Registered Office or Address	
Schedules:	Schedule 1: Definitions

1.1 The Contract records the agreement between Brachers and the Client and comprises of the following:

- 1.1.1 Contract Details
- 1.1.2 The terms and conditions overleaf
- 1.1.3 The Schedules specified in the Contract Details

2. THE TERMS

- 2.1 The Contract contains the terms on which Brachers will facilitate access to and, otherwise provide supporting services in respect of the Client Account.
- 2.2 By using the Client Account, the Client confirms that it accepts these terms and agrees to comply with them.
- 2.3 The Contract refers to the following additional terms, which also apply to the use of the Client Account:
 - 2.3.1 Eledecks Terms of Use; and
 - 2.3.2 Eledecks Privacy Policy.
- 2.4 In each case as may be amended by Eledecks from time to time.

3. THE CONTRACT

- 3.1 The Contract is subject to and contingent upon on the following agreements being and remaining in force:
 - 3.1.1 the Retainer between Brachers and the Client (if applicable);
 - 3.1.2 Brachers' Terms of Engagement; and
 - 3.1.3 the Sponsor Contract between Eledecks and Brachers.
- 3.2 These terms apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate.
- 3.3 Pursuant to the terms of the Contract, Brachers shall facilitate access to the Client Accounts on or after (whichever is earliest):
 - 3.3.1 the Client signs a Retainer with Brachers(if applicable); or
 - 3.3.2 the Client enters into a Client Agreement with Eledecks.
- 3.4 Unless otherwise terminated in accordance with its terms, the Contract, shall start on the Commencement Date (**Term**) and continue until such date as a party provides written notification to the other that it wishes to terminate the Contract.

4. THE PORTAL

- 4.1 Subject to the terms of the Sponsor Contract during the Term Brachers shall be entitled to, add or modify Brachers Content or Add-ons.

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- 4.2 Brachers is not responsible for managing or updating the Client Content uploaded to the Portal by the Client.
- 4.3 The Client acknowledges that the Client Account is set up by Eledecks and access to the Portal and the Decks is granted by Eledecks under a Client Agreement.
- 4.4 The Client hereby acknowledges and accepts that access to the Portal and the Decks is subject to and contingent upon the Client's compliance with the terms of the Client Agreement and the Eledecks Terms of Use. Subject to obtaining consent from the Client, Eledecks may from time to time add new 'My Decks' or other additional services through the Portal to which the Client may subscribe on payment of additional Client Fees.
- 4.5 The Client acknowledges and accepts that the Brachers Content and Eledecks Content is intended to provide guidance on commonly encountered HR and employment law matters in the UK. It is not intended to be exhaustive, as it may not cover unusual situations or interactions, effects of foreign law or overseas residence or domicile, or tax matters. Commentary and other materials forming part of the Eledecks Content and Brachers Content are not intended to constitute a definitive or complete statement of the law on any subject and do not constitute legal advice in any specific situation.
- 4.6 The Brachers Content and Eledecks Content is subject to copyright and may not be stored, copied, disseminated, used, modified or re-sold (except as an integral part of the Portal provided to Clients as described under the Contract and the Client Agreement).
- 4.7 The Eledecks' Content and Brachers' Content is provided as a business tool for diligent use by professional users in the UK but is not intended to be or to substitute for professional advice. Brachers will have no liability or responsibility (including liability for negligence) arising from any Brachers' Content or Eledecks' Content or any reliance placed on the Eledecks Content and Brachers Content by any person.
- 4.8 Without prejudice to clause 4.7, it is the responsibility of all users of the Portal to use the Eledecks Content and Brachers Content strictly in accordance with the notes and guidance provided. Brachers will have no liability or responsibility (including liability for negligence) arising from any failure to read, apply and follow the notes and guidance or the use of or reliance upon the Brachers Content and Eledecks Content for any purpose other than that which it was intended.

5. CLIENTS' OBLIGATIONS

- 5.1 The Client shall:
- 5.1.1 enter into the Client Agreement at or promptly following the date of the Contract;
 - 5.1.2 use the portal for its intended purposes as set out in the Contract and according to the Schedule;
 - 5.1.3 keep all passwords or other credentials for access to the Portal confidential, unique and secure;

- 5.1.4 allow only permit approved Users to access any Client User Account;
 - 5.1.5 retain original documentation and records and not to rely on the Portal as the sole repository for Client Content;
 - 5.1.6 not store, copy, disseminate, use, modify or re-sell any part of the Portal or the Eledecks' Content or the Brachers' Content for any purpose not expressly permitted by the Contract;
 - 5.1.7 not gain access or attempt to gain access to the Website or Portal code or programming materials or otherwise attempt to reproduce or analyse the workings of the Website or Portal, nor provide any information or assistance to any person for any such purpose;
 - 5.1.8 not circumvent or seek to circumvent the security of the Website or the Portal or of Personal Data or any measures to restrict access to parts of the Portal which a User is not authorised to view or use;
 - 5.1.9 not use the Portal for any illegal or immoral purposes;
 - 5.1.10 not use Brachers' and Eledecks' brands or trade marks in sales and marketing materials without the express written permission of Brachers and Eledecks and in accordance with any brand guidance from time to time issued;
 - 5.1.11 promptly and without delay notify Brachers and provide Brachers with all information, in relation to any complaint or dissatisfaction the Client has regarding the Portal;
 - 5.1.12 promptly notify Brachers if it becomes aware of a breach of security or breach of copyright in relation to the Portal as a whole or in part; and
 - 5.1.13 pay all fees or other sums due to Brachers under the Retainer and Eledecks (under the Client Agreement).
- 5.2 The Client undertakes that it shall observe and comply with all obligations under the Contract, Client Agreement, the Eledecks Terms of Use and Eledecks Privacy Policy. The Client hereby acknowledges that failure to comply with this obligation will constitute a material breach of the Contract.

6. FEES

- 6.1 Any fees payable by the Client to Brachers in respect of the services that Brachers provides under the Contract will be set out in the Retainer.
- 6.2 The fees payable by the Client to Eledecks in respect of the Client's use of the Client Account are set out in the Client Agreement (**Client Fees**).
- 6.3 [Brachers shall be entitled to a commission of 30% on all Client Fees received by Eledecks (exclusive of VAT) from Clients during the term of the Contract.]

7. INTELLECTUAL PROPERTY

- 7.1 Brachers owns and shall retain all Intellectual Property Rights in the Brachers' Content. The Client, shall acquire, no rights in such Intellectual Property Rights other than a non-exclusive license to use the Portal in accordance with the Contract and the Client Agreement during the Term.
- 7.2 Eledecks owns and shall retain all Intellectual Property Rights in the Eledecks' Content. The Client, shall acquire, no rights in such Intellectual Property Rights other than a non-exclusive license to use the Portal in accordance with the Contract and the Client Agreement during the Term.
- 7.3 The Client will retain all Intellectual Property Rights in Client Content (except to the extent that it is copied from Eledecks Content or Brachers Content, with or without modifications).

8. LIABILITY

- 8.1 Nothing in the Contract shall exclude or restrict liability for death or personal injury resulting from the negligence of Brachers or a liability of Brachers for a fraudulent misrepresentation by Brachers.
- 8.2 Subject to clause 9.1 Brachers shall not be liable whether in contract tort (including negligence), breach of statutory duty, or otherwise, even if foreseeable, arising under or in connection with:
- 8.2.1 use of, or inability to use, the Portal; or
 - 8.2.2 use of or reliance on any Brachers' Content or Eledecks Content displayed on the Portal.
- 8.3 Subject to clause 8.1 Brachers will not be liable for loss of profits, sales, business, contracts, revenue or anticipated savings or for damage to reputation or goodwill, loss of business opportunity or business interruption and or any indirect, consequential loss or damage.
- 8.4 Subject to clauses 8.1, 8.2 and 8.3 the total liability of Brachers in respect of all losses under or in connection with the Contract arising from any one claim or for the total of all claims arising from any one act or default, whether in contract, tort (including negligence or breach of statutory duty), or otherwise howsoever and whatever the cause, shall in no circumstances exceed £1 million.
- 8.5 The Client will indemnify Brachers against all losses, costs, damages, penalties on an indemnity basis and expenses awarded against or incurred by Brachers directly or indirectly in connection with:
- 8.5.1 any breach of contract, wrongful or negligent act or omission, or other default by the Client;
 - 8.5.2 any Client Content which infringes or is alleged to infringe any third party rights or is otherwise or is alleged to be defective, harmful, defamatory or unlawful; and

- 8.5.3 any loss of or interruption to or malfunction of the Portal where such claim arises from the Client's failure to pay any fee to Eledecks in accordance with the terms of the Client Agreement or any breach of or termination of the Contract by the Client.
- 8.6 If Brachers' performance of any of its obligations under the Sponsor Contract is prevented or delayed by any act or omission by the Client or any failure by the Client to perform any obligations under the Contract or the Client Agreement or the Eledecks Terms of Use or Eledecks Privacy Policy (**Client Default**):
 - 8.6.1 Brachers shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Client Default; and
 - 8.6.2 the Client shall indemnify and keep Brachers indemnified against any costs or losses sustained or incurred by Brachers arising directly or indirectly from the Client Default.

9. TERMINATION¹

- 9.1 The Contract is dependent on the Sponsor Contract remaining in force. If the Sponsor Contract is terminated for any reason, (unless the Parties agree otherwise in writing) then the Contract will automatically cease.
 - 9.2 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving written notice to the other party.
 - 9.3 Brachers may terminate the Contract with immediate effect by giving the Client notice if:
 - 9.3.1 the Client commits a material breach or repeated minor breach of any of its obligations under the Contract, the Client Agreement or the Eledecks Terms of Use and, only if such breach is remediable, the Client fails to remedy such breach within seven (7) days of being notified by Brachers to do so;
 - 9.3.2 the Client: (i) ceases to trade (either at all, or as to any part or division involved in the performance of the Contract); or (ii) becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party;
 - 9.3.3 a person (including the holder of a charge or other security interest) is appointed to manage or take control of the whole or part of the business or assets of that party, or notice of an intention to appoint such a person is given or documents relating to such an appointment are filed with any court;
 - 9.3.4 the ability of the Client's creditors to take any action to enforce their debts is suspended, restricted or prevented or some or all of the Client's creditors accept, by agreement or pursuant to a court order,
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an amount of less than the sums owing to them in satisfaction of those sums;

9.3.5 any process is instituted which could lead to the Client being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent amalgamation or reconstruction); and/or

9.3.6 Eledecks terminates the Client Agreement at any time for any reason.

9.4 Brachers may terminate the Contract by not less than seven (7days' notice to the Client if Eledecks has ceased or intends to cease to carry on business or to provide the Portal in its current form or if (whether due to changes to be made to the Portal or in its business model or for other substantial reasons) Eledecks considers that it is not practical or economic for it to continue to provide the Portal.

10. CONSEQUENCE OF TERMINATION

10.1 Upon termination or expiry of the Contract the Client shall securely destroy or delete all copies of Eledecks' Content and Brachers' Content or documents derived from or containing Eledecks Content and Brachers Content in its possession.

10.2 Upon termination of the Contract, the Client shall immediately pay to Brachers and Eledecks all sums then outstanding or otherwise payable to Brachers and Eledecks pursuant to the Contract, the Retainer and the Client Agreement.

10.3 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right of Brachers to be paid sums pursuant to Clause 5.1.13, or claim damages in respect of any breach of the Contract.

10.4 On termination or expiry of the Contract the following clauses 6 (Fees), 7 (Intellectual Property), 8 (Liability), 9 (Termination), 10 (Consequences of Termination), and 11 (General) shall continue in force.

11. GENERAL

11.1 **ENTIRE AGREEMENT.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

11.2 **VARIATION.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.3 **WAIVER.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided

under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 11.4 **SEVERANCE.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part-provision of the Contract is deemed deleted under Clause 12.4 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.5 **THIRD PARTY.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 11.6 **NOTICES.** Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
- 11.6.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 11.6.2 sent by fax to its main fax number or sent by email to the address specified by the parties.
- 11.7 Any notice or communication shall be deemed to have been received:
- 11.7.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 11.7.2 if sent by pre-paid first-class post or other next working day delivery service, at 9 a.m. on the second Business Day after posting or at the time recorded by the delivery service.
- 11.7.3 if sent by fax or email, at 9 a.m. on the next Business Day after transmission.
- 11.8 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 11.9 **GOVERNING LAW.** The Contract 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) shall be governed by and construed in accordance with the law of England and Wales.
- 11.10 **JURISDICTION.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation.

The Contract has been entered into on the date stated at the beginning of it (**Commencement Date**).

Signed by

for and on behalf of Brachers LLP

.....

Authorised signatory

Signed by [INSERT NAME]

for and on behalf of [INSERT CLIENT NAME]

.....

Authorised signatory

SCHEDULE 1- DEFINITIONS

Add-ons means services added to the Portal by Brachers which attract Add-on Fees if Client subscribes to them.

Brachers Content means all information and materials (however recorded or preserved) disclosed or made available, directly or indirectly, by Brachers or its employees, officers, Partners, representatives or agents to Eledecks or its agents and/or uploaded by or on behalf of the Brachers or its Partners to the Portal, including but not limited to Personal Data, employment contracts, policy documents, toolkits, templates, operations, processes, trade secrets, advice and know-how, but excluding Client Content.

Business Day means Monday to Friday excluding bank holidays in England and Wales.

Business Hours means the hours of 9.00am to 5.00pm Monday to Friday excluding bank holidays in England and Wales.

Client means this specific Client.

Client Account means an account of this specific Client by which this Client can access the Portal.

Client Agreement means the agreement between Eledecks and this specific Client by which this Client subscribes to the Portal.

Client Content means all information and materials (however recorded or preserved) disclosed or made available, directly or indirectly, by or on behalf of the Client or its employees, officers, representatives or agents to Eledecks or its agents and/or uploaded by or on behalf of the Client to the Portal, including but not limited to Personal Data, employment contracts, policy documents, toolkits, templates, operations, processes, trade secrets and know-how.

Client Fees: has the meaning given in clause 6.2.

Client User Account means an Account set up on the Website or by Eledecks for use by a User who is an employee of this specific Client and authorised by this specific Client.

[**Contract** means this agreement between the Client and Brachers.]

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018 as amended.

Decks means modules, panels and dashboards of the Portal identified as Decks in the Portal.

Eledecks means Eledecks Limited incorporated in England and Wales under number 5320438 with registered office at 14 Phoenix Park, Telford, Coalville, Leicestershire LE67 3HB.

Eledecks Content means all information and materials (however recorded or preserved) disclosed or made available, directly or indirectly, by or on behalf of Eledecks or its employees, officers, representatives or agents through the Portal, including but not limited to employment contracts, policy documents, toolkits, templates, operations, processes, trade secrets and know-how.

Eledecks Privacy Policy means the Eledecks privacy notice as set out on the Website from time to time through which the Portal is accessed.

Eledecks Terms of Use means the Eledecks' website terms of use as set out on the Website from time to time through which the Portal is accessed and which form part of the Contract.

Intellectual Property Rights means intellectual property rights wherever in the world arising, whether registered or unregistered (and including any applications), including copyright, know-how, confidential information, trade secrets, business names and domain names, trade marks, service marks, trade names, patents, utility models, design rights, semi-conductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off.

My Decks mean those Decks which are provided as additional options, usually at extra cost to the Client.

Personal Data has the meaning set out in the Data Protection Legislation or a Client Agreement.

Portal means the web-based service provided by Eledecks to Brachers, and the Client.

Schedules mean the Schedules set out at the end of these terms and conditions (as modified by any subsequent updates to the Schedules which Eledecks or Brachers may issue from time to time as permitted by the Contract).

Retainer means an agreement between Brachers and the Client for employment law advisory services.

Sponsor Contract means the agreement between the Eledecks and Brachers.

Term has the meaning given to it in clause 3.4.1

Website means the web site or sites or other means of online access to and delivery of the Portal for the time being provided by Eledecks, including the web pages and resources provided by Eledecks with Sponsor Branding.

User means an individual who is authorised to access the Portal by or on behalf of the Client or Brachers.