

TERMS AND CONDITIONS OF BUSINESS

THE PARTIES

- (1) The Limited Company as named within the Schedule (and save where otherwise indicated, includes any third party to whom the provision of consultancy services is assigned or sub-contracted with the prior approval of the Client) ("**the Consultancy**").
- (2) Robert Giles Agencies Limited (registered company no 3778376) of 11 Argyle Street, London, W1F 7TH ("**the Employment Business**").

RECTALS

- (A) The Employment Business carries on the business of sourcing and supplying consultancies to provide services to Clients of the Employment Business. The Client has instructed the Employment Business to supply a Consultancy to provide certain services, as specified in the attached schedules ("**the Schedules**") ("**the Consultancy Services**").
- (B) The Employment Business will introduce a Consultancy to the Client to provide the Consultancy Services to the Client on the terms and subject to the conditions of this Agreement.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement the following definitions apply:

- "**AWR**" means the Agency Workers Regulations 2010;
- "**Assignment**" means the Consultancy Services to be performed by the Consultancy Staff for the Client for a period of time during which the Consultancy is supplied by the Employment Business to provide the Consultancy Services to the Client;
- "**Client**" means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) requiring the services of the Consultancy and identified in the attached Schedule;
- "**Companies Acts**" means the Companies Acts 1985, 1989 and 2006;
- "**Conduct Regulations**" means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
- "**Confidential Information**" shall mean any and all confidential, commercial, financial, marketing, technical or other information or data of whatever nature relating to the Client or the Employment Business or their business or affairs (including but not limited to this Agreement, data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information concerning the Assignment) in any form or medium whether disclosed or granted access to, whether in writing, orally or by any other means, provided to the Consultancy or any third party in relation to the Assignment by the Client or the Employment Business or by a third party on behalf of the Client whether before or after the date of this Agreement together with any reproductions of such information in any form or medium or any part(s) of such information;
- "**Consultancy Fees**" means the fees payable to the Consultancy for the provision of the Consultancy Services as set out in the Schedule. For the avoidance of doubt, the Consultancy Fees include the agreed fees for the Consultancy Services, any expenses or disbursements authorised by the Client and VAT charged at the applicable rate;
- "**Consultancy Staff**" means such of the Consultancy's employees, workers, officers or representatives provided to perform the Consultancy Services (and, save where otherwise indicated, includes any officer, employee, worker or representative of any third party to whom the provision of the Consultancy Services is assigned or sub-contracted with the prior approval of the Client);
- "**IR35 Legislation**" means Chapter 8 of Part 2 of ITEPA and the Social Security Contributions (Intermediaries) Regulations 2000;
- "**ITEPA**" means the Income Tax (Earnings and Pensions) Act 2003;
- "**Losses**" means all losses, liabilities, damages, costs, expenses whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands; and "Loss" shall be construed accordingly; and
- "**NICS Legislation**" means the Social Security (Categorisation of Earners) Regulations 1978.

- 1.2. Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.
- 1.3. The headings contained in this Agreement are for convenience only and do not affect their interpretation.
- 1.4. Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of this Agreement) and all subordinate legislation made (before or after this Agreement) under it from time to time.

2. THE CONTRACT

- 2.1. This Agreement together with the Schedule ("Agreement") constitutes the entire agreement between the Employment Business and the Consultancy for the supply of the Consultancy Services to the Client and governs the Assignment undertaken by the Consultancy with the Client. This Agreement shall prevail over any other terms put forward by the Consultancy.
- 2.2. For the avoidance of doubt this Agreement shall not be construed as a contract of employment between any Consultancy Staff supplied to provide the Consultancy Services and either the Employment Business or the Client and any of the liabilities of an employer arising out of the Assignment shall be the liabilities of the Consultancy.
- 2.3. No variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between the Employment Business and the Consultancy and set out in writing and a copy of the varied Agreement is given to the Consultancy stating the date on or after which such varied Agreement shall apply.
- 2.4. The Schedule shall specify the Client, the Consultancy Fees payable by the Employment Business and such expenses as may be agreed, any notice period and any other information relevant to the Assignment.

3. RELATIONSHIP BETWEEN THE EMPLOYMENT BUSINESS AND THE CONSULTANCY AND BETWEEN THE CLIENT AND THE CONSULTANCY

- 3.1. The Employment Business is not obliged to offer Assignments to the Consultancy and the Consultancy is not obliged to accept any Assignment. Both parties acknowledge that there is no intention to create mutuality of obligation during any Assignment or between Assignments.
- 3.2. The Consultancy acknowledges to the Employment Business that its services are supplied to the Employment Business as an independent contractor and that accordingly the responsibility of complying with all statutory and legal requirements relating to the Consultancy Staff (including the payment of taxation and compliance with the immigration laws applicable to the jurisdiction in which the Consultancy Services are provided) shall fall upon and be discharged wholly and exclusively by the Consultancy.
- 3.3. Nothing in this Agreement shall render any member of the Consultancy Staff an employee or worker of either the Employment Business or the Client. The Consultancy shall ensure that none of the Consultancy Staff holds themselves out as an employee or worker of either the Employment Business or the Client. In the event that any person should seek to establish any liability or obligation upon the Employment Business on the grounds that the Consultancy Staff are an employee/employees or worker/workers of the Employment Business or the Client, the Consultancy shall upon demand indemnify the Employment Business and keep it indemnified in respect of any such liability or obligation and any related Losses which the Employment Business shall incur.
- 3.4. The Consultancy acknowledges that no member of the Consultancy Staff is an agency worker as defined under the AWR and that the AWR do not apply in relation to this Agreement or any Assignment under this Agreement. The Consultancy shall indemnify and keep indemnified the Employment Business (or, as the case may be, the Client) against any Losses of the Employment Business (or the Client) may suffer or incur as a result of any claim made by or on behalf of any member of the Consultancy Staff under the AWR.

- 3.5. The Consultancy shall provide the Consultancy Services and subject to the prior written approval of the Client (which will not be unreasonably withheld or delayed) shall be entitled to assign or sub-contract the performance of the Consultancy Services, provided that the Employment Business and the Client are reasonably satisfied that the assignee or sub-contractor has the required skills, qualifications, resources and personnel to provide the Consultancy Services to the required standard and that the terms of any such assignment or sub-contract contain the same acknowledgements under and obligations imposed by this Agreement.
- 3.6. Save as otherwise stated in this Agreement, the Consultancy shall be entitled to supply its services to any third party during the term of this Agreement provided that this in no way compromises or is to the detriment of the supply of its services to the Client or amounts to a breach of this Agreement.
- 3.7. The Consultancy shall be permitted to determine how it will provide the Consultancy Services and, subject to complying with any reasonable operational requirements of the Client, the flexibility to determine the number of hours required to provide, and the times during which it will provide, the Consultancy Services. The Consultancy will be at liberty to determine the location at which the Consultancy Services will be provided, but where the Consultancy Services are undertaken at the Client's site, the Consultancy will comply with any reasonable requirements relating to working hours, and any other operational requirements in relation to that site.

4. WARRANTIES PROVIDED BY THE CONSULTANCY

- 4.1. The Consultancy warrants to the Employment Business that:
- 4.1.1. by entering into and performing its obligations under this Agreement it will not thereby be in breach of any obligation which it owes to any third party;
- 4.1.2. the Consultancy Staff have the necessary skills and qualifications to perform the Consultancy Services;
- 4.1.3. the Consultancy and the Consultancy Staff providing the Consultancy Services have agreed to opt out of the Conduct Regulations and have signed an agreement to that effect and as such understand that none of the Conduct Regulations apply to this Assignment. Further the Consultancy warrants that it will only supply staff to perform the Consultancy Services who have opted out of the Conduct Regulations and further that any person to whom the performance of the Consultancy Services are assigned or sub-contracted has opted out of the Conduct Regulations; and
- 4.1.4. the Consultancy is not a "managed service company" as defined in section 61B of the Income Tax (Earnings and Pensions) Act 2003 but that it is compliant in all respects with the IR35 Legislation;
- 4.2. The Consultancy shall procure that the Consultancy Staff, any sub-contractor or assignee performing the Consultancy Services warrant that they are not and do not operate as "managed service companies" as defined in section 61B of ITEPA but that they are compliant in all respects with ITEPA, the IR35 Legislation and the NICS legislation.
- 4.3. The Consultancy warrants to the Employment Business that the Consultancy Staff have consented in writing to the Client, the Employment Business and to any other intermediary involved in supplying the services of the Consultancy and the Consultancy Staff to the Client (now or in the future);
- 4.3.1. processing the Consultancy Staff's personal data for purposes connected with the provision of the Consultancy Services and pursuant to this Agreement; and
- 4.3.2. exporting and/or processing the Consultancy Staff's personal data in jurisdictions outside the European Economic Area for purposes connected with the performance of this Agreement.

5. OBLIGATIONS OF THE CONSULTANCY

- 5.1. The Consultancy agrees on its own part and on behalf of the Consultancy Staff as follows:
- 5.1.1. to observe any relevant rules and regulations of the Client's establishment or the premises where the Consultancy Services are being performed to which attention has been drawn or which the Consultancy might reasonably be expected to ascertain, including but not limited to those relating to health and safety to the extent that they are reasonably applicable to the Consultancy and the Consultancy Staff;
- 5.1.2. to take all reasonable steps to safeguard its own safety, the safety of the Consultancy Staff and the safety of any other person who may be affected by the actions of the Consultancy Staff whilst on the Assignment;
- 5.1.3. to comply with the Data Protection Act 1998 in respect of any personal data which the Consultancy is granted access to for the purpose of or by reason of the performance of the Consultancy Services;
- 5.1.4. not at any time to divulge to any person, nor use for its own or any other person's benefit, any Confidential Information relating to the Client's or the Employment Business' employees, business affairs, transactions or finances;
- 5.1.5. not to engage in any conduct detrimental to the interests of the Employment Business and/or the Client which includes any conduct which could bring the Employment Business and/or the Client into disrepute and/or which results in the loss of custom or business for the Employment Business and/or the Client;
- 5.1.6. not to commit any act or omission constituting unlawful discrimination against or harassment of any member of the Employment Business' or the Client's staff;
- 5.1.7. not to sub-contract or assign to any third party any of the Consultancy Services which it is required to perform under the Assignment except in accordance with clause 3.5;
- 5.1.8. to furnish the Client and/or the Employment Business with any progress reports as may be requested from time to time;
- 5.1.9. to notify the Employment Business forthwith in writing if it should become insolvent or if any of the circumstances set out in clauses 9.2.5 to 9.2.7 apply;
- 5.1.10. to confirm in writing whether or not the Consultancy Staff have a material interest (as defined in section 51 ITEPA) in the Consultancy. A "material interest" includes holding more than 5% of the shares of the Consultancy;
- 5.1.11. to comply with all the requirements of ITEPA, the NICS legislation, VAT legislation and the Companies Acts;
- 5.1.12. to notify the Employment Business in writing immediately if it becomes subject to a HMRC investigation or compliance activity including but not limited to any of ITEPA, the NICS legislation or VAT legislation;
- 5.1.13. to comply with all relevant legal obligations, including but not limited to statutory obligations; and
- 5.1.14. to provide at its own cost, subject to any agreement to the contrary specified in the Schedule all such necessary equipment as is reasonable for the adequate performance by the Consultancy Staff of the Consultancy Services.
- 5.2. If the Consultancy is unable for any reason to provide the Consultancy Services during the course of the Assignment, the Consultancy should inform the Employment Business as soon as is reasonably practicable but in any event, no later than 1 hour after it becomes aware of any event which renders it unable to provide the Consultancy Services so as to enable the Employment Business to discharge its obligations to the Client.
- 5.3. If, either before or during the course of an Assignment, the Consultancy becomes aware of any reason why it or the Consultancy Staff may not be suitable for an Assignment, the Consultancy shall notify the Employment Business without delay.
- 5.4. The Consultancy acknowledges that any breach of its obligations set out in this clause may cause the Employment Business to suffer Loss and that the Employment Business reserves the right to recover such Losses from the Consultancy by way of set off or deduction from any sums owed by the Employment Business to the Consultancy.

6. OBLIGATIONS OF THE EMPLOYMENT BUSINESS

- 6.1. Throughout the term of this Agreement the Employment Business will:
- 6.1.1. pay the Consultancy the agreed Consultancy Fees in respect of the provision of the Consultancy Services in accordance with clause 8 below, subject to any right of set off or deduction in clause 5.4;
- 6.1.2. furnish the Consultancy with the information set out in the Schedule in order for the Consultancy to arrange for the provision of the Consultancy Services; and
- 6.1.3. advise the Consultancy of any health and safety information or advice which it receives from the Client which may affect the Consultancy Staff during the Assignment.
7. **INVOICING**
- 7.1. The Employment Business operates and maintains a SELF BILLING system of recording all VAT transactions with The Consultancy thus invoices are not obligatory.
- 7.2. Upon completion of the Assignment, or as may be agreed and specified in the Schedule, at the end of each week of the Assignment the Consultancy shall deliver to the Employment Business its certificate/invoice for the Consultancy Fees due from the Employment Business to the Consultancy giving a detailed breakdown showing the work performed.
- 7.3. The Consultancy shall obtain the signature of an authorised representative of the Client as verification of execution of the provision of the Consultancy Service for each of its certificates/invoices.
- 7.4. The Consultancy's certificate/invoice must be received by the Employment Business by no later than 1:00pm on the Wednesday following the week to which it relates.
- 7.5. The Employment Business shall not be obliged to pay any fees to the Consultancy unless a certificate/invoice has been properly submitted by the Consultancy in accordance with this clause 7 of this Agreement and until the Client has verified the execution of the Assignment.

8. CONSULTANCY FEES

- 8.1. The Employment Business will pay the Consultancy the Consultancy Fees within 7 days of receipt of the Consultancy's certificate/invoice subject to:
- 8.1.1. the satisfactory performance of the Services;
- 8.1.2. the Consultancy's compliance with this Agreement;
- 8.1.3. the Employment Business' receipt of the Consultancy's certificate/invoice in accordance with clause 7 above.
- 8.1.4. The Client will be responsible for reimbursement to the Consultancy for any expense incurred by the Consultancy on behalf of the Client in pursuance of the Assignment or for any Per Diem agreed between the parties as recompense for any such expenses, but only to the extent that such expenses or Per Diem have been previously agreed in writing by the Client. However, in the event of the Client insisting that the Employment Business serves as the means of making the payment of such expenses or Per Diem to the Consultancy on behalf of the Client, then the Employment Business shall be responsible for all reimbursement of such expenses or Per Diem but only to the extent that the tax imposts have been received by the Employment Business, that the expenses or Per Diem have previously been approved by the Client and that the Employment Business has received payment in full in respect of such expenses or Per Diem from the Client.
- 8.2. The Consultancy shall be responsible for any PAYE Income Tax and National Insurance Contributions and any other taxes and deductions payable in respect of the Consultancy Staff for the Assignment including any social fund contributions payable in any other Member State pursuant to a valid A1, E101 or E102 certificate issued to any of the Consultancy Staff.
- 8.3. All payments due from the Employment Business will be made to the Consultancy and not to any third party or member of the Consultancy Staff, any sub-contractor or assignee.
- 8.4. The Employment Business shall not be obliged to pay the Consultancy for any periods during which the Consultancy Services are not provided, whether this is due to the Consultancy being unable to provide the Consultancy Services or where the Client does not require the Consultancy Services or otherwise in respect of holidays, illness or absence of the Consultancy Staff.
- 8.5. The Consultancy shall bear the cost of any training which the Consultancy Staff may require in order to perform the Consultancy Services.

9. TERM AND TERMINATION

- 9.1. This Agreement shall commence on the date set out in the Schedule and shall continue until completion of the Consultancy Services to the reasonable satisfaction of the Client at which time this Agreement shall expire automatically unless previously terminated by the Employment Business or the Consultancy giving the other party the period of notice specified in the Schedule.
- 9.2. Notwithstanding clauses 9.1 and 9.3 of this Agreement, the Employment Business may without notice and without liability instruct the Consultancy to cease work on the Assignment at any time, where:
- 9.2.1. the Consultancy has acted in breach of the rules and regulations applicable to third parties providing services to the Client; or
- 9.2.2. the Consultancy has committed any serious or persistent breach of any of its obligations under this Agreement; or
- 9.2.3. the Client reasonably believes that the Consultancy has not observed any condition of confidentiality from time to time; or
- 9.2.4. the Client is dissatisfied with the Consultancy's provision of the Consultancy Services and has terminated the Assignment; or
- 9.2.5. either the Client or the Consultancy is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- 9.2.6. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Client or the Consultancy;
- 9.2.7. an order is made for the winding up of either the Client or the Consultancy, or where either the Client or the Consultancy passes a resolution for its winding up other than for the purpose of a solvent company reorganisation or amalgamation where the resulting entity will assume all the obligations of the other party under this Agreement; or
- 9.2.8. the Employment Business suspects that the Consultancy has not complied with the requirements of ITEPA or the NICS Legislation;
- 9.2.9. any member of the Consultancy Staff is suspected of any fraud, dishonesty or serious misconduct; or
- 9.2.10. the Consultancy is unable to perform the Consultancy Services for 2 days or more.
- 9.3. The Consultancy acknowledges that the continuation of the Assignment is subject to and conditioned by the continuation of the contract entered into between the Employment Business and the Client. In the event that the contract between the Employment Business and the Client is terminated for any reason the Assignment shall cease with immediate effect without liability to the Consultancy.
- 9.4. Failure by the Consultancy to give full and proper notice of termination as required in the Schedule attached shall constitute a breach of contract and shall entitle the Employment Business to claim damages from the Consultancy for any resulting Losses suffered by the Employment Business.

10. INTELLECTUAL PROPERTY RIGHTS

- The Consultancy acknowledges that all copyright, trademarks, patents and other intellectual property rights deriving from the provision of the Consultancy Services, by the Consultancy, the Consultancy Staff and/or any third party to whom the Contract is assigned or sub-contracted, for the Client during the Assignment shall belong to the Client, save such rights as may be expressly owned or retained by the Consultancy and set out in the Schedule. Accordingly the Consultancy Staff (and shall procure that any relevant member of the Consultancy Staff shall execute all such documents and do all such acts as the Employment Business shall from time to time require in order to give effect to the Client's rights pursuant to this clause.

11. CONFIDENTIALITY

- 11.1. In order to protect the confidentiality and trade secrets of the Client and/or the Employment Business and without prejudice to every other duty to keep secret all information given to it or gained in confidence the Consultancy agrees on its own part and on behalf of its Consultancy Staff as follows:
- 11.1.1. not at any time whether during or after the Assignment (unless expressly so authorised by the Client or the Employment Business as a necessary part of the performance of its duties) to disclose to any person or to make use of any of the trade secrets or Confidential Information of the Client or the Employment Business with the exception of information already in the public domain;
- 11.1.2. to deliver up to the Client or the Employment Business (as directed) at the end of the Assignment all documents and other materials belonging to the Client (and all copies) which are in its possession including documents and other materials created by it or the Consultancy Staff during the course of the Assignment;
- 11.1.3. not at any time to make any copy, abstract, summary or précis of the whole or any part of any document or other material belonging to the Client except when required to do so in the course of its duties under the Assignment in which event any such item shall belong to the Client or the Employment Business as appropriate.

12. COMPUTER EQUIPMENT WARRANTY

- The Consultancy shall ensure that any computer equipment and associated software which it provides to the Consultancy Staff for the purpose of providing the Consultancy Services contains anti-virus protection with the latest released upgrade from time to time.

13. RESTRICTION

- The Consultancy shall not and shall procure that the Consultancy Staff shall not during the Assignment or for a period of 3 months following the termination of the Assignment supply the services of the Consultancy Staff directly, or through any other person, firm or company, to any Client for whom it has carried out the Assignment at any time during the previous 3 months (save in the case of supply through an Employment Business or recruitment consultancy with whom the Consultancy was also registered at the date of commencement of the Assignment).

14. CONTRACT MONITORING AND AUDITS

- 14.1. The Employment Business reserves the right to audit the Consultancy on an annual basis to ensure compliance with this Agreement and all statutory requirements in relation to all Consultancy Staff supplied to provide the Consultancy Services including but not limited to ITEPA and the NICS legislation. The Employment Business will give the Consultancy 28 days notice of such audit.
- 14.2. To assist the Employment Business in its audit the Intermediary will:
- 14.2.1. maintain such records as are necessary to comply with this Agreement and all statutory requirements in relation to all Consultancy Staff supplied to provide the Consultancy Services, and will provide copies of the same to the Employment Business on request;
- 14.2.2. provide the Employment Business with access to its premises and all records relating to all Consultancy Staff supplied to provide the Consultancy Services.

15. LIABILITY

- 15.1. The Consultancy shall:
- 15.1.1. be liable for any and all Losses or injury to any party resulting from the deliberate and/or negligent acts or omissions of the Consultancy or Consultancy Staff during an Assignment, or for the acts or omissions of any assignee or sub-contractor to whom the Consultancy assigns or sub-contracts the performance of the Consultancy Services, during an Assignment;
- 15.1.2. ensure the provision of adequate Employer's Liability Insurance, Public Liability Insurance, Professional Indemnity Insurance and any other suitable policies of insurance in respect of the Consultancy and the Consultancy Staff during an Assignment and shall make a copy of the policy available to the Employment Business upon request; and
- 15.1.3. be liable for any defects arising in relation to the Consultancy Services and shall rectify at its own cost such defects as may be capable of remedy within a reasonable period from notification of such defects by either the Employment Business or the Client.

16. INDEMNITY

- The Consultancy shall indemnify and keep indemnified the Employment Business against any Losses suffered or incurred by the Employment Business by reason of any proceedings, claims or demands by any third party (including specifically, but without limitation, HM Revenue and Customs and any successor, equivalent or related body pursuant to the IR35 Legislation and/or any of the provisions of ITEPA and/or any supporting or consequential secondary legislation relating thereto) or the NICS Legislation).

17. SEVERABILITY

- If any of the provisions of this Agreement shall be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the remaining terms, which shall continue to be valid to the fullest extent permitted by applicable laws.

18. NOTICES

- All notices which are required to be given in accordance with this Agreement shall be in writing and may be delivered personally or by first class prepaid post to the registered office of the party upon whom the notice is to be served or any other address that the party has notified the other party in writing, by email or facsimile transmission. Any such notice shall be deemed to have been served: if by hand when delivered, if by first class post 48 hours following posting and if by email or facsimile transmission, when that email or facsimile is sent.

19. DISCLAIMER

- The Employment Business makes no representation nor does it accept any responsibility for ensuring that the terms of this Agreement are an accurate reflection of the relationship between the Client and the Consultancy. Furthermore the Employment Business accepts no liability to indemnify the Consultancy for any Losses incurred by the Consultancy whether by reason of tax or other statutory or contractual liability or any such liability to any third party arising from the Assignment.

20. THIRD PARTY RIGHTS

- 20.1. Save as set out in clause 20.2, none of the provisions of this Agreement is intended to be for the benefit of or enforceable by third parties (other than permitted assignees who shall be entitled to enforce the provisions of this Agreement as if original parties to it) and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.
- 20.2. The Client shall be entitled to rely on and enforce the provisions of clause 3.4 and the indemnities given by the Consultancy in favour of the Client, notwithstanding that the Client is not a party to this Agreement.

21. GOVERNING LAW AND JURISDICTION

- This Agreement shall be construed in accordance with the laws of England & Wales and all disputes, claims or proceedings between the parties relating to the validity, construction or performance of this Agreement shall be subject to the exclusive jurisdiction of the Courts of England & Wales.