

## TERMS OF BUSINESS

### THE PARTIES

- (1) Robert Giles Agencies Limited (registered company no. 3778376) of 11 Argyll Street, London, W1F 7TH ("the Employment Business").
- (2) The Limited Company or Organisation as named within Schedule 1 ("the Client") to whom the Consultancy is introduced. For the avoidance of doubt the Client shall also include any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Consultancy is introduced.

### RECITALS

- (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;
"Charges"	means the charges as notified to the Client at the commencement of the Assignment and which may be varied by the Employment Business from time to time during the Assignment. The charges are comprised of the Consultancy Fees, the Employment Business' commission, and any travel, hotel or other disbursements as may have been agreed with the Client or, if there is no such agreement, such expenses as are reasonable;
"Conduct Regulations"	means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
"Consultancy"	means the person, firm or corporate body introduced to the Client by the Employment Business to carry out an Assignment (and, save where otherwise indicated, includes Consultancy Staff and any third party to whom the provision of the Consultancy Services is assigned or sub-contracted with the prior approval of the Client and any officer, employee, worker or representative of any such third party);
"Consultancy Fees"	means the fees payable to the Consultancy for the provision of the Consultancy Services;
"Consultancy Staff"	means any officer, employee, worker or representative of the Consultancy supplied to provide 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);
"Data Protection Laws"	means the Data Protection Act 1998, any applicable statutory or regulatory provisions and all European Directives and regulations in force from time to time relating to the protection and transfer of personal data;
"Engagement"	means the engagement, employment or use of the Consultancy's services or the services of any Consultancy Staff, by the Client or by any third party to whom the Consultancy and/or any Consultancy Staff have been introduced by the Client, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, an agency, licence, franchise or partnership arrangement, or any other engagement or through another employment business; and "Engage", "Engages" and "Engaged" shall be construed accordingly;
"Introduction"	means (i) the passing to the Client of a curriculum vitae or information which identifies the Consultancy or Consultancy Staff or (ii) the Client's interview of a Consultancy or Consultancy Staff (in person, by telephone or by any other means), following the Client's instruction to the Employment Business to supply a consultancy; and (iii) the supply of a Consultancy; and, in any case, which leads to an Engagement of that Consultancy or Consultancy Staff; and "Introduces" shall be construed accordingly;
"Introduction Fee"	means the fee payable by the Client in accordance with clause 7;
"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;
"NICs Legislation"	means the Social Security (Categorisation of Earners) Regulations 1978;
"Remuneration"	includes gross base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments taxable, (and, where applicable, non-taxable) payable to or receivable by the Consultancy or the Consultancy Staff for services rendered to or on behalf of the Client. Where a company car is provided, a notional amount of to be agreed will be added to the sums paid to the Consultancy in order to calculate the Employment Business' fee.

- 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 Schedules ("the Agreement") constitutes the contract between the Employment Business and the Client for the supply of the Consultancy Services by the Employment Business to the Client, and is deemed to be accepted by the Client by virtue of its request for, interview with, or Engagement of a Consultancy or the passing of any information about the Consultancy to any third party following an Introduction.
- 2.2. This Agreement contains the entire agreement between the Parties and unless otherwise agreed in writing by a director of the Employment Business shall prevail over any terms of business or purchase conditions (or similar) put forward by the Client.
- 2.3. Subject to clause 5.2 no variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between a director of the Employment Business and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.
- 2.4. The Client acknowledges that the Consultancy and the Consultancy Staff carrying out the Assignment have opted out of the Conduct Regulations and further that any person to whom the performance of the Consultancy Services has been assigned or sub-contracted has opted out of the Conduct Regulations and that none of the Conduct Regulations apply to any Assignments governed by this Agreement.
- 2.5. The Client acknowledges that the Consultancy may supply any of the Consultancy Staff to perform the Consultancy Services and where the Consultancy is unable to provide any part of the Consultancy Services for whatever reason the Consultancy 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 the agreement between the Consultancy and the Employment Business. The Client shall not unreasonably withhold or delay any approval sought for the assignment or sub-contracting of the Consultancy Services.
- 2.6. The Client acknowledges that the Consultancy shall be permitted to determine how it will provide the Consultancy Services and will have the flexibility to determine the number of hours required and the times worked, to complete the Consultancy Services; subject to the Consultancy complying with any reasonable operational requirements of the Client. The Consultancy will be at liberty to determine the location at which it will provide the Consultancy Services, 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 the Client's site.

#### 3. INFORMATION TO BE PROVIDED

- Prior to the commencement of the Assignment, or if this is not practical, upon commencement of the Assignment, the Employment Business will send to the Client the information set out in Schedule 1.

#### 4. VERIFICATION OF EXECUTION OF THE CONSULTANCY SERVICES

- 4.1. At the end of each week of the Assignment (or at the end of the Assignment where the Assignment is for a period of less than 1 week or is completed or finished before the end of a week) the Client shall verify the execution of the Consultancy Services by signature of a form provided to the Client for this purpose.
- 4.2. Verification by the Client of the execution of the Consultancy Services constitutes acceptance by the Client that the Consultancy Services have been provided satisfactorily and in accordance with this Agreement. Failure to verify execution in writing does not affect the Client's obligation to pay the Charges in respect of the work done. In the event that the Client is dissatisfied with the work performed by the Contractor the provisions of clause 8 below shall apply.

#### 5. CHARGES

- 5.1. The Client agrees to pay the Charges. VAT is payable at the applicable rate on the entirety of the Charges.

- 5.2. The Employment Business reserves the right to vary the Charges agreed with the Client, by giving written notice to the Client, in order to comply with any additional liability imposed by statute or other legal requirement or entitlement.
- 5.3. The Charges are invoiced to the Client on a weekly basis and are payable within 7 days.
- 5.4. The Employment Business reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.
- 5.5. The Client's obligations under this clause 5 shall be performed without any right of The Client to invoke set-off, deductions, withholdings or other similar rights.

#### 6. PAYING THE CONSULTANCY

The Employment Business is responsible for paying the Consultancy Fees.

#### 7. INTRODUCTION FEES

- 7.1. The Client shall be liable to pay the Employment Business an Introduction Fee where the Employment Business introduces the Consultancy to the Client and:
    - 7.1.1. the Client engages the Consultancy or any Consultancy Staff other than through the Employment Business within a period of 3 months from the termination of the Assignment in respect of which the Consultancy or Consultancy Staff was supplied, or if there was no supply, within 3 months of the introduction of the Consultancy by the Employment Business to the Client; or
    - 7.1.2. where the Client introduces the Consultancy to a third party and such introduction results in an Engagement of the Consultancy or any Consultancy Staff by the third party other than through the Employment Business either during the Assignment or within 3 months from the termination of the Assignment.
  - 7.2. The Introduction Fee will be calculated in accordance with the scale of fees for permanent introductions set out in Schedule 2.
  - 7.3. No refund of the Introduction Fee will be paid in the event that the Engagement subsequently terminates.
  - 7.4. VAT is payable in addition to any Introduction Fee due.
- #### 8. TERMINATION OF THE ASSIGNMENT
- 8.1. The Assignment will terminate when the Client confirms that the Consultancy Services have been completed.
  - 8.2. Notwithstanding the provisions of clause 8.1 the Client may terminate the Assignment with immediate effect by notice in writing to the Employment Business where:
    - 8.2.1. the Consultancy has acted in breach of any statutory or other reasonable rules and regulations applicable to them while providing the Consultancy Services; or
    - 8.2.2. the Client reasonably believes that the Consultancy has not observed any condition of confidentiality applicable to the Consultancy from time to time; or
    - 8.2.3. the Client reasonably considers that the Consultancy's provision of the Consultancy Services is unsatisfactory.
  - 8.3. The Employment Business may terminate an Assignment with immediate effect by notice in writing if:
    - 8.3.1. the Client is in willful or persistent breach of its obligations under this Agreement and where the breach is capable of being remedied, fails to remedy the breach within 7 days of receiving written notice from the Employment Business to do so; or
    - 8.3.2. the Client fails to pay any amount which is due to the Employment Business in full and on the date that the payment falls due; or
    - 8.3.3. the Client 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; or
    - 8.3.4. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Client; or
    - 8.3.5. an order is made for the winding up of the Client, or where the Client 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
    - 8.3.6. (where the Client is an individual) the Client dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order; or
    - 8.3.7. the Client supervises, directs or controls the Consultancy Staff;
    - 8.3.8. the Client provides to the Employment Business a document which falsely states that the Consultancy Staff do not work under (or are not subject to) supervision, direction or control of any person or if the Client seeks to supervise, direct or control the Consultancy Staff in contravention of this Agreement.

#### 9. CONFIDENTIALITY AND DATA PROTECTION

All information relating to a Consultancy is confidential and where that information relates to an individual is also subject to the Data Protection Laws and is provided solely for the purpose of providing Consultancy Services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times. In addition information relating to the Employment Business' business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.

#### 10. INTELLECTUAL PROPERTY RIGHTS

All copyright, trademarks, patents and other intellectual property rights deriving from the provision of the Consultancy Services by the Consultancy to the Client or any third party to whom the Consultancy Services are 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 Schedule 1 to this Agreement. Accordingly the Employment Business shall use its reasonable endeavours to ensure that the Consultancy shall (and any relevant member of the Consultancy Staff shall) execute all such documents and do all such acts in order to give effect to the Client's rights pursuant to this clause.

#### 11. LIABILITY

- 11.1. Whilst reasonable efforts are made by the Employment Business to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from the Consultancy and to provide the same in accordance with the Assignment details as provided by the Client, no liability is accepted by the Employment Business for any Losses arising from the failure to provide a Consultancy for completion of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Consultancy or if the Consultancy terminates the Assignment for any reason. For the avoidance of doubt, the Employment Business does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.
- 11.2. The Client warrants that it does not (and does not have the right to) supervise, direct or control the Consultancy or the Consultancy Staff. The Client will notify the Employment Business in writing if it exercises supervision, direction or control, or seeks the right to supervise, direct or control the Consultancy or the Consultancy Staff in which case the Employment Business may terminate the Agreement and/ or any Assignments under the Agreement in accordance with clause 8.3. (see Note 19) In addition the Client agrees that the Employment Business does not (and does not have the right to) supervise, direct or control the Consultancy or the Consultancy Staff. Furthermore no member of the Consultancy Staff is an agency worker as defined under the AWR.
- 11.3. The Client shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Consultancy and about any requirements imposed by law or by any professional body, which must be satisfied if the Consultancy is to fill the Assignment. The Client will comply in all respects with all relevant statutes, by-laws, codes of practice and legal requirements including the provision of adequate public liability insurance in respect of the Consultancy.
- 11.4. The Client shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business by reason of any proceedings, claims or demands by any third party (including specifically, but without limitation, HMRC and any successor, equivalent or related body pursuant to any of the provisions of ITEPA (and/or any supporting or consequential secondary legislation relating thereto) or the NICs Legislation arising out of any Assignment or arising out of any non-compliance with and/or as a result of any breach of this Agreement by the Client.

#### 12. 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.

#### 13. 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 provisions, which shall continue to be valid to the fullest extent permitted by applicable laws.

#### 14. RIGHTS OF THIRD PARTIES

None of the provisions of this Agreement are intended to be for the benefit of or enforceable by third parties and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

#### 15. GOVERNING LAW AND JURISDICTION

This Agreement is governed by the law of England & Wales and is subject to the exclusive jurisdiction of the Courts of England & Wales.