

GENERAL TERMS AND CONDITIONS

1 DEFINITIONS

1.1 In these terms and conditions ("Terms and Conditions"):-

"AWR" shall mean the Agency Workers Regulations 2010.

'the Company', 'the Consultant', and 'the Fees' shall have the meanings set out in the Contract Confirmation Note.

'the Scope of Services' shall mean the assignment which the Consultant is engaged by the Company to perform, details of which shall be set out in the Contract Confirmation Note.

'the Scope of Services Period' shall mean the period during which the Consultant is engaged by the Company to perform the Scope of Services, which shall be set out in the Contract Confirmation Note.

'Contract Confirmation Note' shall mean the document setting out the specific terms of the contract for services together with the General Terms and Conditions.

'Operatives' means any person firm or company engaged by the Consultant or its sub-Consultants in connection with the Scope of Services.

'Regulations' means the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

2 THE CONTRACT

2.1 These Terms and Conditions and the Contract Confirmation Note details contain the entire agreement (*the Contract*) between the Company and the Consultant in relation to the Scope of Services and supersede any prior agreement between them. Where there is any ambiguity or difference between the terms as set out in the Contract Confirmation Note and these Terms and Conditions the former will prevail.

2.2 No modification or variation of these Terms and Conditions shall be effective unless a director of the Company consents in writing to such modification or variation.

2.3 The Company has no obligation to offer future contracts to the Consultant and if it does make any such offer, the Consultant is not obliged to accept it.

2.4 In the event of any ambiguity or conflict between the Contract Confirmation Note and the Terms and Conditions the Contract Confirmation Note takes precedence.

2.5 The Consultant has opted out of the Regulations and shall use its reasonable endeavours to procure that any Operative provided under these terms and conditions shall do so.

3 PERFORMANCE

3.1 Neither the Company nor the Client shall be entitled to or seek to exercise any supervision, direction or control over the Consultant or the operatives in the manner of performance of the Scope of Services save that the Client shall give reasonable and lawful instructions as may be needed to direct the Operative as to how the Scope of Services should be carried out.

3.2 The Consultant must comply with its obligations to the Operatives under Working Time Regulations 1998 and all other statutes and codes of practice and where necessary obtain any agreements to opt-out of the 48 hour working week limit. At the request of the Company the Consultant must provide evidence that it has complied with those obligations.

4 PAYMENT OF FEES AND EXPENSES

4.1 The Consultant shall (subject to clauses 4.3 and 4.4) be paid the Fees (plus VAT if appropriate) by the Company in connection with the Scope of Services. Subject to clause 4.2 the Company shall pay the Fee due to the Consultant by direct BACS transfer to the Consultant's bank account.

4.2 Subject to clause 4.3 the Company shall pay to the Consultant for all services provided.

4.3 The Company is not obliged to make any payment of Fees to the Consultant unless the Consultant has submitted a invoice to the Company. Each such invoice must include any authorised expenses claimed; Such invoices must not be submitted more frequently than on a weekly basis but any invoice for fees submitted for payment more than 12 months after the work has been carried out to which the fees relate shall not be paid save where such delay is a consequence of any act or omission on the part of the Company. Payment will be made by the Company (subject to factors beyond its control) not later than 14 days after receipt of the relevant invoice, or as soon as practicable thereafter.

4.4 Where fees are withheld in accordance with clause 4.3 the Company will in a timely fashion undertake such investigations as appropriate to resolve the issue of the withheld payment.

4.5 The Company reserves the right to withhold any Fees due to the Consultant where the Consultant is in breach of any obligations under clauses 5.1 and 5.2.

5 OBLIGATIONS OF THE CONSULTANT

5.1 The Consultant shall (and shall procure that the Operatives shall) perform the obligations under this Contract and in relation to the Scope of Services with all reasonable skill and care. The Company shall, satisfy itself that Operatives have the required skills and qualifications to perform the services before allowing Operatives to do so. The Consultant must take all reasonable steps to produce evidence satisfactory to the Company on request as to training and qualifications and hereby authorises the Company to confirm the same with any relevant institutions and authorities. The Consultant shall ensure that all representations it makes as to the qualifications and abilities of the Operatives are correct, comprehensive and not misleading.

5.2 Subject to clauses 12.1 and 12.2 the Consultant will indemnify the Company against any breach of its obligations under clause 5.1 and will, without limitation, rectify at its own cost any defective work arising from any act or omission of the Operative in relation to performing the services pursuant to the Scope of Services.

5.3 The Consultant will ensure that all tools and other equipment which it or the Operatives utilise in connection with the Scope of Services and supplied by them are in good working order and that (without limitation) any such computer equipment and associated software are

compliant and licensed and contain up-to-date and effective virus protections. Any corruption of data caused by the actions of the Consultant or any Operatives must be put right by the Consultant at its own cost save where such actions were taken at the direction of the Company.

6 TERMINATION

- 6.1 This Contract shall terminate on the occurrence of any one of the following:
 - 6.1.1 Immediately upon written notification by either party if the other commits any serious irremediable breach of contract.
 - 6.1.2 Immediately upon written notification by either party if the other commits any serious but remediable breach of the Contract and fails to remedy such breach within the period of 21 days from the service on the party of a notice specifying the breach and requiring it to be remedied;
 - 6.1.3 Immediately if the Consultant becomes bankrupt, insolvent or becomes the subject of a receiving or Winding-up order, makes any composition with its creditors or has an administrative receiver appointed over all or part of its undertaking or assets;
 - 6.1.4 At the end of the Scope of Services Period (if this is a fixed period of time without notice).
 - 6.1.5 If the Scope of Services Period is not a fixed period of time, upon either the Company or the Consultant giving the other party 90 days' notice or otherwise such notice as provided for in the Confirmation Note.
 - 6.1.6 On termination of a Scope of Services for any reason, the Consultant shall remain entitled to be paid the Fees in respect of all services executed or partly executed prior to the date of termination of the Contract subject to compliance with those Terms and Conditions.

7 CONFIDENTIAL INFORMATION AND COPYRIGHT

- 7.1 Both during the Scope of Services Period and for the period of 2 years afterwards (or for such longer period as may be prescribed under the Scope of Services) at all times afterwards the Company must treat as confidential and must not at any time disclose (save as may be required by law) to any person or use any information of a secret, private or confidential nature or any trade secrets belonging to the Consultant if such information or secret comes to the Company's attention whilst or as a result of providing its services under this Contract. The Company will procure that the Operatives also observe these provisions.
- 7.2 On demand and in any event when this Contract ends the Company must return to the Consultant all documents and other property belonging to the Consultant that is (or last was) in its possession or control.
- 7.3 If at any time whilst performing its obligations under this contract the Company (or any Operative) originates any design (whether registered or not) or other work in which copyright may subsist it must promptly disclose it. In consideration of the Company entering into this Contract, the Company assigns (and will procure that any relevant Operative assigns) to the Consultant by way of future assignment all copyright and other proprietary rights (if any) for the full terms thereof throughout the world in respect of all such copyright designs and works.
- 7.4 The Consultant and the Company shall and will procure any Operative shall enter into specific terms of confidentiality as required.

8 RELATIONSHIP BETWEEN THE PARTIES

- 8.1 The Company is an employment business and nothing herein shall constitute the relationship of employer and employee or a partnership between the Company and the Consultant or the Operatives, or between the Client and the Consultant or the Operatives.
- 8.2 The Company warrants (and shall procure that the Operatives warrant) that:-
 - 8.2.1 The Operatives do not have (in relation to the Company) any of the statutory or common law rights or protections of an employee nor any rights under AWR;
 - 8.2.2 Neither the Consultant nor the Operatives is entitled to any payment from the Company whilst services are not being performed due to illness or holidays or have (in relation to the Company or the Client) any protection under the legislation relating to unfair dismissal and redundancy.
 - 8.2.3 The Operatives are not subject to the rules or procedures or will receive the pay or benefits applicable to employees of the Client or the Company whether pursuant to AWR or otherwise.
- 8.3 The Consultant will at all times during the continuance of this Contract be responsible for all corporation tax, PAYE, Income Tax and National Insurance Contributions and any other taxes or duties which may be payable in respect of the Fees and any payments made by the Consultant to the Operatives.
- 8.4 The Consultant will duly account to the relevant governmental or statutory department for all taxes due from it and shall keep the Company indemnified in respect thereof and in respect of any taxes or duties which may be chargeable.
- 8.5 The Consultant and Operative each acknowledge and accept that the Company enters into this Contract on the basis that the terms of this clause 8 are a condition precedent of the Contract.

8.6 The Consultant provides consulting, installation, customization and configuration, maintenance, and other services as detailed in an Attachment or TD. The Company will own the copyright in works of authorship that the Consultant develops for Company under a Statement of Work (SOW) (Project Materials). Project Materials exclude works of authorship delivered to the Company, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). Some Existing Works are subject to a separate license agreement (Existing Licensed Works). A program is an example of an Existing Licensed Work and is subject to the program terms. The Consultant grants the Company an irrevocable (subject to the Company's payment obligations), nonexclusive, worldwide license to use, execute, reproduce, display, perform and prepare derivatives of Existing Works that are not Existing Licensed Works. The Consultant retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

The Company indemnifies the Consultant against any claims, proceedings, compensations and costs the Company suffers (and/or the Company's assignees or sub-licensees suffer) or for which the Company is liable in connection with any existing or future intellectual property right of any third party caused by or arising out of the carrying out of the services or by the exercise of the licence granted to the Consultant by the Company or any sub-licence granted pursuant to the Company's licences (including any licence the Company gives to a Third Party) or by possession of the Company's Documents.

The Consultant shall not be liable to the Company for any use of the Consultant's Documents for purposes other than that for which the same was prepared or provided.

9 ASSIGNMENT OF THE CONTRACT

- 9.1 The Consultant is not obliged to provide the services of any named Operative in relation to the Scope of Services and may, subject always to clause 5.1, assign or sub-contract its rights and obligations under this contract but the Consultant will remain liable for the acts and omissions of its sub-Consultants and assignees save to the extent such acts or omissions arose from a breach of the Terms and Conditions by the Company.
- 9.2 The Company shall be entitled to transfer or assign the benefit and/or burden of this Contract.
- 9.3 Nothing in this contract shall prohibit the Consultant from providing its services and those of the Operatives to any person or organisation other than the Company or the Client.

10 HEALTH AND SAFETY

- 10.1 The Company and/or its Client shall take all reasonable steps to ensure that Operatives are provided with relevant health and safety information and training relating to the Client's business either prior to or at the commencement of the Scope of Services.
- 10.2 The Company accepts no responsibility for the health, safety and protection from injury of the Consultant or the Operatives or any of their property while performing services in connection with the Scope of Services (save where personal injury or death results from the negligence of the Company).
- 10.3 The Consultant will (and will procure that the Operatives will) take all reasonable steps to safeguard the safety of the Operatives and the safety of any other persons who may be affected by their actions in connection with the Scope of Services.

11 INSURANCES

- 11.1 During the currency of this Contract the Consultant shall ensure that the Consultant and the Operatives are adequately insured against Public, Employers, Professional Indemnity and , Road Traffic and other relevant liabilities and will provide evidence of such cover that is satisfactory to the Company on request provided that where Professional Indemnity, Road Traffic or other insurance is required for a Scope of Services (save for public liability and employer's liability insurance which shall be maintained at all times) such a requirement shall be specified by the Company in the Contract Confirmation Note in order that the parties can ensure appropriate insurances are in place. Without prejudice to the generality of the foregoing, the minimum level of professional indemnity insurance cover where applicable, shall be £100,000 in the annual aggregate.
- 11.2 If the Company and/or Client shall require the Operatives to work outside the UK this shall be agreed in advance with the Consultant (for which additional insurances may be required).

12 LIABILITY & INDEMNITY

- 12.1 In no event shall the aggregate liability of either party for any and all claims (in contract, tort, negligence, breach of statutory duty or otherwise) for any loss, damage, costs or expenses of any nature howsoever incurred or suffered by any person exceed the total amount payable in respect of each Scope of Services or Contract or £1,000 whichever is greater save for any claims brought pursuant to clauses 12.4 or 12.5 below to which this cap shall not apply.
- 12.2 Neither party shall be liable for any indirect or consequential loss, damage, costs or expenses incurred or suffered by any person

(however caused), including any loss of profits, turnover, business or goodwill suffered or incurred by any person.

- 12.3 Subject to clause 12.1 the Consultant will indemnify the Company against all claims for direct loss against the Company by the Client arising out of any breach of this Contract by the Consultant.
- 12.4 In the event of any claim arising out of any breach of clauses 8.1 to 8.4 (inclusive) by the Consultant and/or Operative, the Consultant and/or Operative shall indemnify the Company against any claim whatsoever or howsoever arising there from.
- 12.5 The Consultant shall indemnify the Company in the event of any claim brought by an Operative and/or the Client against the Company arising out of the supply of any Operative under Regulation 10 of the AWR or any other claim under AWR as a result of any act or omission of the Consultant.

13 GENERAL

- 13.1 All warranties, conditions or other terms implied by statute or common law are hereby expressly excluded and, without prejudice to the generality of the foregoing, the Company shall not be liable for any act or omission of the Consultant and/or the Operatives save for acts or omissions arising as a result of breach by the Company or its obligations pursuant to the Contract.
- 13.2 If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions hereof and the remainder of the provision in question shall not be affected thereby.
- 13.3 These Terms and Conditions shall be governed by and construed in accordance with English law.
- 13.4 The expiration or termination of the Contract, howsoever arising, shall not operate to affect such of the provisions of this Contract as are expressed to operate after then.
- 13.5 Any notice to be given by one part to the other hereunder shall either:
be communicated verbally initially and confirmed in writing immediately; or
be communicated directly in writing.
- 13.6 All written correspondence shall be addressed to that party at the address set out in these Terms and Conditions or such other address as may be notified to the other party from time to time for the purposes of this clause and shall be given by delivery or sent by prepaid recorded delivery and shall be deemed to have been received on the day of delivery or within 72 hours of posting.