

TERMS OF BUSINESS WITH THE CLIENT FOR THE SUPPLY OF A SELF-EMPLOYED CONSULTANCY WHO HAS NOT OPTED OUT OF THE CONDUCT REGULATIONS (OUTSIDE IR35)

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 Assignment Details (“**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:

“ Agency Workers Regulations ”	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;
“ Client ”	means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Consultancy is supplied or introduced;
“ 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;
“ Employment Business ”	Agenda Recruitment Limited (registered company no. 4642343) of Unit 18, Watermark Way, Foxholes Business Park, Hertford, Hertfordshire, SG13 7TZ;

- “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; 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; or (iii) the supply of a Consultancy; and, in any case, which leads to an Engagement of that Consultancy or Consultancy Staff; and “Introduces” and “Introducing” shall be construed accordingly;
- “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;
- “Period of Extended Hire”** means any additional period that the Client wishes the Consultancy to be supplied for beyond the duration of the original Assignment or series of Assignments as an alternative to paying a Transfer Fee;
- “Relevant Period”** means (a) the period of 8 weeks commencing on the day after the last day on which the Consultancy worked for the Client having been supplied by the Employment Business; or (b) the period of 14 weeks commencing on the first day on which the Consultancy worked for the Client having been supplied by the Employment Business or 14 weeks from the first day of the most recent Assignment where there has been a break of more than 6 weeks (42 days) since any previous Assignment;
- “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 for services rendered to or on behalf of the Client. Where a company car is provided, a notional amount of £2,000 will be added to the sums paid to the Consultancy in order to calculate the Employment Business’ fee;
- “Transfer Fee”** means the fee set out in the Schedule and payable in accordance with clause 8 below and Regulation 10 of the Conduct Regulations;
- “Vulnerable Person”** means any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention, and includes any person under the age of 18.
- 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 attached Schedule (“**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 6.2 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 Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973) when Introducing Consultancies for Assignments with the Client.
- 2.5. The Client acknowledges that the Consultancy and the Consultancy Staff carrying out the Assignment have not opted out of the Conduct Regulations and that any person to whom the performance of the Consultancy Services may be assigned or sub-contracted has not opted out of the Conduct Regulations and consequently that all of the Conduct Regulations apply to this Agreement.
- 2.6. 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.
- 2.7. 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. CLIENT OBLIGATIONS

- 3.1. To enable the Employment Business to comply with its obligations under the Conduct Regulations the Client undertakes to provide to the Employment Business details of the position which the Client seeks to fill, including the following:
 - 3.1.1. the type of work that the Consultancy would be required to do;
 - 3.1.2. the location and hours of work;
 - 3.1.3. the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Consultancy Staff to possess in order to work in the position;
 - 3.1.4. any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
 - 3.1.5. the date the Client requires the Consultancy to commence the Assignment; and
 - 3.1.6. the duration or likely duration of the Assignment.

4. INFORMATION TO BE PROVIDED

- 4.1. When making an Introduction of a Consultancy to the Client the Employment Business shall inform the Client:

- 4.1.1. of the identity of the Consultancy and that of the Consultancy Staff supplied by the Consultancy to carry out the Assignment;
 - 4.1.2. that the Consultancy Staff has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment;
 - 4.1.3. that the Consultancy is Engaged by the Employment Business under a contract for services; and that the Consultancy Staff are willing to work in the Assignment; and
 - 4.1.4. the Charges.
- 4.2. Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any Public or Bank Holiday) following, save where the Consultancy is Introduced for an Assignment in the same position as one in which the Consultancy had previously been supplied within the previous 5 business days and such information has already been given to the Client and remains unchanged, unless the Client requests that the information be resubmitted.
- 4.3. The Client accepts that the Employment Business may ask for specific details in order to create a job specification. The Employment Business may later use this description to advertise job vacancies, through both online and offline media sources, to attract relevant Applicants.

5. VERIFICATION OF EXECUTION OF THE CONSULTANCY SERVICES

- 5.1. 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.
- 5.2. 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 Consultancy the provisions of clause 10.1 and 11 below shall apply.

6. CHARGES

- 6.1. The Client agrees to pay the Charges. VAT is payable at the applicable rate on the entirety of the Charges.
- 6.2. 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.
- 6.3. The Charges are invoiced to the Client on a weekly basis and are payable within fourteen (14) days.
- 6.4. The Employment Business reserves the right to charge interest on invoiced amounts unpaid by the due date at the rate of 4% per annum above the base rate from time to time of the Barclays Bank Plc from the due date until the date of payment. Furthermore, the Employment Business reserves the right to charge the Client administration costs, including but not limited to, issuing court proceedings arising from late payment.
- 6.5. There are no refunds payable in respect of the Charges.
- 6.6. The Client's obligations under this clause 6 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.

7. PAYING THE CONSULTANCY

The Employment Business is responsible for paying the Consultancy.

8. TRANSFER FEES

- 8.1. The Client shall be liable to pay a Transfer Fee if the Client Engages the Consultancy or any Consultancy Staff Introduced by the Employment Business other than via the Employment Business, or introduces the Consultancy or any Consultancy Staff to a third party and such introduction results in an Engagement of the Consultancy or any Consultancy Staff by the third party other than via the Employment Business and:

- 8.1.1. where the Consultancy has been supplied by the Employment Business, such Engagement takes place during the Assignment or within the Relevant Period; or
- 8.1.2. where the Consultancy has not been supplied, such Engagement takes place within six (6) months from the date of the Introduction to the Client.

The Transfer Fee will be calculated in accordance with the Schedule.

- 8.2. If the Client wishes to Engage the Consultancy other than via the Employment Business, without liability to pay a Transfer Fee the Client may, on giving one week's written notice to the Employment Business, engage the Consultancy for the Period of Extended Hire specified in the Schedule.
- 8.3. During such Period of Extended Hire the Employment Business shall supply the Consultancy on the same terms on which it has or would have been supplied during the Assignment and in any case on terms no less favourable than those terms which applied immediately before the Employment Business received the notice in clause 8.2 and the Client shall continue to pay the Charges. If the Employment Business is unable to supply the Consultancy for any reason outside its control for the whole or any part of the Period of Extended Hire; or the Client does not wish to hire the Consultancy on the same terms as the Assignment, but the Consultancy is Engaged by the Client, the Client shall pay the Transfer Fee, reduced pro-rata to reflect any Charges paid by the Client during any part of the Period of Extended Hire worked by the Consultancy before being Engaged by the Client. If the Client fails to give notice of its intention to Engage the Consultancy other than via the Employment Business before the Engagement takes place, the parties agree that the Transfer Fee shall be due in full.
- 8.4. Where prior to the commencement of the Client's Engagement other than via the Employment Business, the Employment Business and the Client agree that such Engagement will be on the basis of a fixed term of less than 12 months, the Employment Business may, in its absolute discretion, reduce the Transfer Fee as calculated in accordance with the Schedule pro-rata. Such reduction is subject to the Client Engaging the Consultancy for the agreed fixed term. Should the Client extend the Consultancy's Engagement or re-Engage the Consultancy within 12 months from the commencement of the initial Engagement the Employment Business reserves the right to recover the balance of the Transfer Fee.
- 8.5. No refund of the Transfer Fee will be paid in the event that the Engagement of the Consultancy other than via the Employment Business by the Client or a third party to which the Client introduces the Consultancy or any Consultancy Staff, subsequently terminates or terminates before the end of the fixed term referred to in clause 8.4.
- 8.6. VAT is payable at the applicable rate in addition to any Transfer Fee due.

9. SUITABILITY CHECKS AND INFORMATION TO BE PROVIDED IN SPECIAL SITUATIONS

- 9.1. Where:
 - 9.1.1. the Intermediary or the Agency Worker is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment the Employment Business will take all reasonably practicable steps to obtain and offer to provide to the Hirer copies of any relevant qualifications or authorisations of the Agency Worker; and
 - 9.1.2. in addition, where the Assignment involves working with, caring for or attending one or more Vulnerable Persons, the Employment Business will take all reasonably practicable steps to obtain and offer to provide copies to the Hirer of two references from persons who are not relatives of the Agency Worker and who have agreed that the references they provide may be disclosed to the Hirer;

and such other reasonably practicable steps as are required to confirm that the Intermediary or the Agency Worker supplied to do the work is suitable for the Assignment. If the Employment Business has taken all reasonably practicable steps to obtain the information above and has been unable to do so fully it shall inform the Hirer of the steps it has taken to obtain this information in any event.

- 9.2. The Client shall advise the Employment Business at the time of instructing the Employment Business to supply a Consultancy, whether during the course of the Assignment, the Consultancy or the Consultancy Staff will be required to work with, care for or attend one or more Vulnerable Persons or engage in activity or otherwise be working in a position covered by the Safeguarding Vulnerable Groups Act or the Protecting Vulnerable Groups (Scotland) Act 2007 as applicable.
- 9.3. The Client shall assist the Employment Business by providing any information required to allow the Employment Business to comply with its statutory obligations under the Safeguarding Vulnerable

Groups Act 2006 (or equivalent legislation in Scotland or subsequent relevant legislation) and to allow the Employment Business to select a suitable Consultancy for the Assignment.

- 9.4. In particular in the event that the Client removes a Consultancy from an Assignment in circumstances which would require the Employment Business to provide information to the Independent Safeguarding Authority (or equivalent authority) under the Safeguarding Vulnerable Groups Act 2006 or the Protecting Vulnerable Groups (Scotland) Act 2007 as applicable, the Client will provide sufficient information to the Employment Business to allow it to discharge its statutory obligations.

10. UNSUITABILITY OF THE CONSULTANCY

- 10.1. The Client undertakes to satisfy itself with the Consultancy's suitability in carrying out the Consultancy Services. If the Client reasonably considers that the services of the Consultancy are unsatisfactory, the Client must notify the Employment Business in writing immediately and may terminate the Assignment in accordance with clause 11.2.
- 10.2. The Employment Business shall notify the Client immediately if it receives or otherwise obtains information which gives the Employment Business reasonable grounds to believe that a Consultancy supplied to the Client is unsuitable for the Assignment and shall be entitled to terminate the Assignment forthwith without prior notice and without liability. Notwithstanding, the Client shall remain liable for all such Charges incurred prior to the termination of the Assignment
- 10.3. The Client shall notify the Employment Business immediately and without delay and in any event within three (3) hours if the Consultancy or the Consultancy Staff fails to provide the Consultancy Services or has notified the Client that they are unable to provide the Consultancy Services for any reason.

11. TERMINATION OF THE ASSIGNMENT

- 11.1. The Assignment will terminate on the end date set out in Assignment Details Form. Either party may terminate the Assignment earlier by giving to the other party in writing the period of notice specified in Assignment Details Form.
- 11.2. Notwithstanding clause 11.1 the Client may terminate the Assignment forthwith by notice in writing to the Employment Business where:
- 11.2.1. the Consultancy has acted in breach of any statutory or other reasonable rules and regulations applicable to them while providing the Consultancy Services;
- 11.2.2. the Client reasonably believes that the Consultancy has not observed any condition of confidentiality applicable to the Consultancy from time to time; or
- 11.2.3. the Client reasonably considers that the Consultancy's provision of the Consultancy Services is unsatisfactory.
- 11.3. The Employment Business may terminate an Assignment forthwith by notice in writing if:
- 11.3.1. The Client is in wilful or persistent breach of its obligations under these Terms 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
- 11.3.2. 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
- 11.3.3. 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
- 11.3.4. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Client; or
- 11.3.5. 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

- 11.3.6. (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.

12. 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.

13. INTELLECTUAL PROPERTY RIGHTS

All copyright, trademarks, patents and other intellectual property rights deriving from the provision of the Consultancy Services by the Consultancy 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 The Assignment Details Form. 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.

14. LIABILITY

- 14.1. 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.
- 14.2. For the avoidance of doubt, neither the Consultancy nor the Consultancy Staff are under the supervision, direction or control of the Employment Business or the Client, the Client does not have the right to supervise, direct or control the Consultancy or the Consultancy Staff and no member of the Consultancy Staff is an agency worker as defined under the Agency Workers Regulations.
- 14.3. 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.
- 14.4. The Client undertakes not to request the supply of a Consultancy to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by a worker who has been transferred by the Client to perform the duties of a person on strike or taking official industrial action.
- 14.5. The Client shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business 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.
- 14.6. The Client undertakes that it knows of no reason why it would be detrimental to the interests of the Consultancy for the Consultancy to fill the Assignment.

15. 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.

16. 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.

17. RIGHTS OF THIRD PARTIES

None of the provisions of this Agreement is 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.

18. LAW AND JURISDICTION

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

SCHEDULE: TRANSFER FEES

- (A) The Transfer Fee referred to in clause 8 shall be calculated as follows: 30% of the Remuneration payable to the Consultancy during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the Charges multiplied by 300.
- (B) The Period of Extended Hire, referred to in clause 8, before the Client Engages a Consultancy shall be twenty six (26) weeks.