

Terms of engagement

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THE PARTIES

- (1) Excel Technical Resourcing Solutions Limited (registered company no. 4930757 of Suite 7, Fleet Offices, 185 Fleet Road, Fleet, Hampshire, GU51 3BL ("**the Employment Business**")
- (2) *Client Company Name* (registered company no. *Client Company Reg Number* ("**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 independent contractors 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 subject to the terms of this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement the following definitions apply:

“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;
“AWR”	means the Agency Workers Regulations 2010[and/or the Agency Workers (Northern Ireland) Regulations 2011
“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’s 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 [and/or the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005
“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 in accordance with clause 2.5);
“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 in accordance with clause 2.5);

“Data Protection Laws”

means the Data Protection Act 2018, the General Data Protection Regulation (EU 2016/679) and any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data;

“Engagement”

means the engagement (including the Consultancy’s and/or the Consultancy Staff’s acceptance of the Client’s offer), 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; 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 “Introduced” 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, fines, penalties or interest, 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 [the Social Security (Categorisation of Earners) (Northern Ireland) Regulations 1978]; and

“Public Authority”

means a public authority (a) as defined in the Freedom of Information Act 2000 [or the Freedom of Information (Scotland) Act 2002] and (b) as further defined in Section 61L ITEPA;

“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 £500 will be added to the sums paid to the Consultancy in order to calculate the Introduction 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 AGREEMENT

- 2.1. This Agreement together with the Schedules (“the Agreement”) constitutes the entire agreement between the Employment Business and the Client for the supply of the Consultancy Services by the Employment Business to the Client. This Agreement 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 Staff or Consultancy to any third party following an Introduction, or by the Client's acceptance of the supply or use of the Consultancy Services or Consultancy Staff, whichever occurs first.
 - 2.1.1. In addition to the acts outlined in Clause 2.1, the Client's acceptance of the supply of the Consultancy Services or continued use of the Consultancy Services provided by the Consultancy Staff shall constitute the Client's unqualified acceptance of this entire Agreement and all of its terms and conditions.
- 2.2. Unless otherwise agreed in writing by *a director* of the Employment Business this Agreement 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.

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.

- 2.4. 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.
- 2.5. 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. Accordingly the Client acknowledges that neither the Consultancy nor the Consultancy Staff work under (or subject to the right of) supervision, direction or control of the Client as to the manner in which they provide the Consultancy Services.
- 2.6. The Client confirms that it is not a Public Authority. If the Client is a Public Authority the Employment Business may terminate this Agreement and any Assignments issued under it in accordance with clause 8.2.10.

3. INFORMATION TO BE PROVIDED BY THE EMPLOYMENT BUSINESS TO THE CLIENT

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/month] of the Assignment (or at the end of the Assignment where the Assignment is for a period of less than 1 [week/month] or is completed or finished before the end of a [week/month]) the Client shall verify the execution of the Consultancy Services by signature of a form provided to the Client for this purpose
- 4.2. The Client agrees that by verifying the execution of the Consultancy Services it also agrees that the Consultancy Services have been provided satisfactorily and in accordance with this Agreement. Even if the Client does not verify execution in

writing, it will still be obliged to pay the Charges in respect of the work done. If the Client is dissatisfied with the work performed by the Consultancy 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 Employment Business will invoice the Client on a weekly basis. The Client will pay the Charges within 30 days of the date of the invoice.

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.

- 5.4. 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.

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 either during the Assignment or within a period of 6 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 6 months of the Introduction of the Consultancy or Consultancy Staff by the Employment Business to the Client;
 - 7.1.2. 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 6 months from the termination of the Assignment.
 - 7.1.3. the Client Engages the Consultancy or any Consultancy Staff, directly or indirectly, through another employment business or supplier, to provide services which are the same as, or substantially similar to, the Consultancy Services described in the Schedules (including, but not limited to, the provision of the same or a similar workshop), either during the Assignment

or within a period of 6 months from the termination of the Assignment or the date of Introduction (whichever is later).

- 7.2. The Introduction Fee will be calculated at 10% of the Consultancy Fees payable to the Consultancy. Where the amount of the Consultancy Fees payable to the Consultancy is not known, the Introduction Fee will be calculated by multiplying the Charges by 10

The Employment Business will not refund the Introduction Fee if the Engagement subsequently terminates.

In the event of a breach of clause 7.1.3, the Client shall be liable to pay a fixed Referral Fee of £4,500.00. This Referral Fee is a genuine pre-estimate of the Employment Business's loss of profit, time, and overheads associated with the Introduction and management of the Consultancy

- 7.3. VAT is payable in addition to any Introduction Fee due.

8. TERMINATION OF THE ASSIGNMENT

[choose either Option A or Option B and delete the option not used]

- 8.1. A: The Assignment will terminate when the [Client confirms that the] Consultancy Services have been completed.

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:

- 8.1.1. the Consultancy has acted in breach of any statutory or other reasonable rules and regulations applicable to them while providing the Consultancy Services; or
- 8.1.2. the Client reasonably believes that the Consultancy has not observed any condition of confidentiality applicable to the Consultancy from time to time; or
- 8.1.3. the Client reasonably considers that the Consultancy's provision of the Consultancy Services is unsatisfactory.
- 8.2. The Employment Business may terminate an Assignment with immediate effect by notice in writing if:
- 8.2.1. the Client is in wilful 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
- 8.2.2. 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
- 8.2.3. 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

- 8.2.4. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Client; or
- 8.2.5. 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
- 8.2.6. (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
- 8.2.7. the Employment Business knows or suspects that the Consultancy or the Consultancy Staff work under (or subject to the right of) supervision, direction or control of any person as to the manner in which they provide the Consultancy Services in breach of this Agreement;
- 8.2.8. the Client fails to provide accurate and sufficient evidence that neither the Consultancy nor the Consultancy Staff work under (or subject to the right of) supervision, direction or control of any person as to the manner in which they provide the Consultancy Services;
- 8.2.9. the Client provides to the Employment Business, the Consultancy or the Consultancy Staff, a document which fraudulently states that the Consultancy Staff do not work under (or are not subject to) supervision, direction or control of any person as to the manner in which they provide the Consultancy Services
- 8.2.10. the Employment Business knows or suspects that the Client is a Public Authority;
- 8.2.11. the Employment Business knows or suspects that the Client has breached the Data Protection Laws.

9. CONFIDENTIALITY AND DATA PROTECTION

- 9.1. 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 information at all times.
- 9.2. Information relating to the Employment Business's 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 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 neither it nor the Employment Business do (or have the right to) supervise, direct or control the Consultancy or the Consultancy Staff as to the manner in which they provide the Consultancy Services. 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 8.2. 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 or the NICs legislation (and/or any supporting or consequential secondary legislation relating thereto)) 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.
- 11.5. 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 the Consultancy, the Consultancy Staff or any third party arising out of any non-compliance with, and/or as a result of, any breach of the Data Protection Laws 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/Scotland/Northern Ireland] and is subject to the exclusive jurisdiction of the Courts of [England & Wales/Scotland/Northern Ireland].