

## AGREEMENT TO SUPPLY CONTRACTORS TO PERFORM CONSULTANCY SERVICES

### TERMS AND CONDITIONS

#### WHEREAS:

- A. The Company is an employment business that supplies skilled contract resource to provide consultancy services to its clients from time to time.
- B. The Client requires fixed term contract resource to provide consultancy services as specified in the Assignment Schedule; and
- C. The parties have agreed that the Company will supply the Contractor to perform Services in the execution of the same, on the terms and conditions set out below and as specified in the Assignment Schedule.

#### IT IS HEREBY AGREED AS FOLLOWS:

### 1. Definitions and Interpretation

#### 1.1 In this agreement:

"Agreement"	means these terms and conditions, the Assignment Schedule, and any other schedules and annexes agreed between the parties from time to time;
"AWR"	means the Agency Workers Regulations 2010;
"Client Group"	means any "subsidiary", "holding company" and/or "associate" person, firm, or corporate body of the Client as defined within the Companies Act 2006;
"Conduct Regulations"	means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
"End Client"	means, where applicable, the Client's customer, or such other third party for whose ultimate benefit the Services are performed;
"Engagement"	means the engagement, employment or use of the Contractor's services or the services of the Representative, directly by the Client, the End Client, or any third party or through any other employment business 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" and "Engaged" shall be construed accordingly;
"Fees"	means the Contract Rate due for the Services set out in the Assignment Schedule and which includes the Company's fee in respect of the provision of its recruitment service, and any other fees set out in the Assignment Schedule, exclusive of VAT;
"Professional Working Day"	means a minimum of 8 hours per day (being the estimated number of hours per day required for completion of the project during the Assignment) or such hours as are agreed in the Assignment Schedule;
"Record of Work"	means the record of Services performed during the Assignment (which may be in the form of a timesheet via a manual or electronic time capture system) or an acceptance certificate or other project deliverables sign off in the format required and confirmed by the Company;
"Remuneration"	means the aggregate gross annual taxable emoluments payable to the Representative employed (including salary, bonuses and commission) during the first year of employment or the annualised gross fees payable to the Contractor or the Representative (where either is Engaged in any capacity other than an employee) or where such figures are not known, the Company shall be entitled to use annualised market rates relevant to the Engagement or the Contractor or Representative;
"Representative"	means the initial Representative provided by the Contractor to perform the Services as named in the Assignment Schedule, together with any substitute Representative as may be supplied under Clause 5 below.

- 1.2 Unless the context requires otherwise, references to the singular include the plural, references to the male include the female, and vice versa in each case. The headings contained in this Agreement are for convenience only and do not have any effect on the interpretation of the terms and conditions contained herein. All references to legislation shall include all subsequent amendments or variations and including implementing regulations made from time to time. All references to Contractor shall include the Representative unless expressed otherwise.

### 2 Agreement

- 2.1 The Agreement constitutes the entire agreement between the Company and the Client for the supply of the Contractor to perform the Contractor Services to the Client and or any End Client and shall supercede any prior agreement between the parties (whether written or oral) relating to the same (such agreement to be deemed mutually terminated with effect from the date this Agreement is accepted or deemed accepted). This Agreement shall prevail over any other terms and conditions or purchase order terms put forward by the Client.
- 2.2 Nothing in this Agreement shall establish or imply any partnership, joint venture, fiduciary relationship, employment, or any other relationship between the parties other than the contractual relationship expressly set out in this Agreement. No party shall have (nor represent that they have) any authority to make or enter into any contractual commitments on the other party's behalf.

- 2.3 Subject to the provisions of clause 7.11 and clause 12.7, no variation or alteration of this Agreement or the Assignment Schedule shall be valid unless the details of the variation are agreed in writing between the Company (through executive directors, legal and or finance managers of the Company only) and the Client and the variation confirms the date the variation shall take effect.
- 2.4 The Contractor and the Representative have provided written notice to the Company pursuant to regulation 32 of the Conduct Regulations that the Contractor and the Representative have opted out of the Conduct Regulations and therefore the Conduct Regulations shall not apply to this Agreement.

### 3 Services

- 3.1 This Agreement sets out the basis upon which the Company shall supply the Contractor to perform the Services under the Assignment Schedule. At the end of the Assignment, the Client is under no obligation to offer any further Assignments to the Company, and the Company is under no obligation to accept any such Assignments, if offered.
- 3.2 Nothing in this Agreement shall operate to prevent the Contractor from contracting with third parties during the Assignment to supply consultancy services, provided this does not create any conflict of interest, or compromise the Contractor's ability to deliver the Services to the Client's specification, or otherwise leads to a breach of this Agreement.
- 3.3 During the Assignment, the Contractor will be required by the Company (under its contractual terms with the Company):-
- 3.3.1 perform the Services promptly and efficiently and with all due care and skill in a professional manner and in accordance with industry standards expected from a specialist supplier of consultancy services;
  - 3.3.2 perform the Services at the Client Site as specified in the Assignment Schedule, or at such other location as agreed with the Client from time to time to ensure the completion of the Assignment;
  - 3.3.3 where the Services are agreed to be provided away from the Client Site (such as the Contractor's offices or place of business), the Contractor shall be responsible for ensuring adequate telephony, IT and other communication facilities to enable the successful performance of the Services remotely;
  - 3.3.4 observe any relevant rules and regulations of the Client's and or End Client's establishment (including the normal hours of work in force at the relevant establishment) to which attention has been drawn or which the Contractor might reasonably be expected to ascertain or ought to be aware of;
  - 3.3.5 use all reasonable endeavours to comply with any timetable, targets, deadlines or other project requirements which are specified by the Client and communicated to the Contractor for the progress or delivery or completion of the Assignment;
  - 3.3.6 comply with any specific additional terms relating to the Assignment required by the Client or End Client set out in the Assignment Schedule or other relevant documentation referred to in the Assignment Schedule;
  - 3.3.7 provide progress reports with respect to the Services as may be requested by the Client or End Client from time to time;
  - 3.3.8 comply with (and will ensure the Representative will comply with) all applicable laws, rules and regulations specified by the Client (including, without limitation, rules and regulations in respect of any statutory obligations, data protection legislation, health and safety, internet and email use, and security);
  - 3.3.9 take all reasonable steps to safeguard the Representative safety and the safety of any other person who may be present or affected by the Representative's actions during the Assignment and comply with the health and safety policies of the Client and or the End Client applicable to their establishment; and
  - 3.3.10 not engage in any conduct detrimental to the interests of the Company, the Client and/or any End Client, including any conduct tending to bring such parties into disrepute or which results in the loss of custom or business.
- 3.4 It is understood by the parties that the method of execution of the Services shall be determined by the Contractor. However, it is recognised by the Contractor that the Client shall have the right to consult with the Contractor and the Representative in respect of the manner of such execution, to ensure that the Assignment is successfully completed to the Client's specification. The Company shall ensure the Contractor undertakes that it will comply with any reasonable and lawful instructions made by the Client that are within the scope of the Assignment.
- 3.5 In the event that the Standard Service Week is based on a set number of hours per week, then the Contractor and the Representative shall have reasonable flexibility as to the allocation of hours worked on a daily basis in each Standard Service Week, provided that the full stated number of hours are worked in each Standard Service week and that any non-standard work patterns conform to the Client's requirements and any Client Site rules and regulations.
- 3.6 In the event that the Contractor is unable for any reason to perform the Services during any working day that the Contractor has agreed to perform the Services, the Contractor shall inform the Client and the Company of such incapacity as soon as reasonably practical any in any event no later than 8 a.m. on the first day of such incapacity.

### 4 Company Obligations

- 4.1 The Company warrants that it will in the performance of its recruitment service to the Client to:-

- 4.1.1 source a suitable Contractor to perform the Services as required by the Client;
  - 4.1.2 procure the supply of the Services through the Contractor;
  - 4.1.3 ensure that the Contractor is an established legal entity in the United Kingdom and its Representative has the legal right to work and reside in the United Kingdom or such other jurisdiction in which the Services are performed (and in particular to carry out the Services for the Assignment) and shall provide proof of such status and such entitlement upon request by the Client; and
  - 4.1.4 comply with all recruitment industry legislation applicable to its recruitment services.
- 4.2 The Company shall use all reasonable efforts to ensure the Contractor (including their Representatives):
- 4.2.1 have the necessary skills and experience to perform the Services and that the Contractor shall bear the cost of any training which may be required for its Representative to successfully complete the Services;
  - 4.2.2 is not prevented by any other contract or arrangement or any statute from fulfilling its obligations under this Agreement;
  - 4.2.3 any computer equipment and associated software which it provides to, or which is used by, its Representatives for the purpose of performing the Services (other than equipment provided by the Client) contains anti-virus protection with the latest released upgrade from time to time;
  - 4.2.4 they will comply with their statutory obligations arising out of or connection with the Services and the Contractor's employment of the Representative (including but not limited to complying with Working Time Regulations 1998 and Health and Safety legislation);
  - 4.2.5 maintain in force during the Assignment insurance policies to cover the Contractor's liabilities arising in respect of the provision of the Services; and
  - 4.2.6 will comply with all applicable anti-bribery and associated legislation relevant to the Assignment (including but not limited to the Bribery Act 2010) and any bespoke anti-bribery policies and procedures of the Client or any End Client.
- 4.3 Both parties understand that where the Contractor and Representative have 'opted out' of the Conduct Regulations, it is unlikely that the Representative will be regarded in law to be an "Agency Worker" and therefore in scope of the application of AWR. However it is expressly understood that the Company makes no warranty in this regard and that the Client takes full responsibility for compliance with AWR in the event of any claim under the AWR by the Contractor and or the Representative, and the Company shall have no liability to the Client in this regard.

## 5 Substitution

- 5.1 The Company shall ensure that the Services are initially performed by the Representative named in the Assignment Schedule.
- 5.2 During the Assignment, the Client agrees that the Contractor shall be entitled to substitute the initially provided Representative for a substitute Representative, subject to the following conditions being met:
- 5.2.1 the Contractor demonstrates to the Client's reasonable satisfaction that any substitute Representative has at least the equivalent levels of skill, qualifications, experience and training as the initial Representative, in order for the required standards of the Services to be met;
  - 5.2.2 any substitute Representative that is proposed by the Contractor must have opted out of the Conduct Regulations;
  - 5.2.3 any substitute Representative that is proposed by the Contractor must have the legal right to work in the United Kingdom or such other jurisdiction in which the Services are carried out;
  - 5.2.4 at the Client's request, the Contractor's initial Representative shall conduct a handover of not less than one week, during which time he/she shall work alongside the substitute Representative in order to ensure that the substitute Representative is familiar with the Client's project requirements, the working environment and any timetable or deadlines to be completed. The Company shall not make any additional charge for the extra Representative during such handover period.

## 6 Client Obligations

- 6.1 The Client shall notify the Company in advance in writing of any clearances or approvals that are required in respect of the Contractor prior to the commencement of an Assignment, to enable such clearances and/or approvals to be obtained prior to the Start Date.
- 6.2 The Client shall:
- 6.2.1 comply with all legislation and codes of practice in relation to the provision of the Services, including ensuring compliance with health and safety regulations pertaining to the Client Site; and
  - 6.2.2 advise the Company and the Contractor of (i) any special health and safety matters applicable to the Client Site where the Services are to be provided, about which the Company is required by the Conduct Regulations to inform the Contractor; (ii) any requirements imposed by law or by any professional body which must be satisfied if the Contractor is to fill the Assignment; (iii) any information the Company may reasonably request about each Assignment in order to enable the Company to source a suitable Contractor; and

- 6.2.3 notify the Company and the Contractor of all security and other office procedures implemented at the Client Site;
  - 6.2.4 provide details of any proposed material change in the nature of the Services or the role of the Representative in respect of such Services and for the avoidance of doubt the Client agrees that it will not make any changes to the Assignment without the Company's prior written consent; and
  - 6.2.5 provide details of any oral or written complaint by the Contractor (and or the Representative) made to the Client and any written request for information that the Client receives from the Contractor (and or the Representative) that has been made pursuant to the AWR, Working Time Regulations 1998, Conduct Regulations, and or health and Safety legislation.
- 6.3 The Client warrants that it knows of no reason why it would be detrimental to the interests of the Contractor for the Contractor to commence and fulfil the Assignment.
- 6.4 The Client warrants that all information and documentation supplied to the Company is complete, accurate and up-to-date and the Client will not do anything to cause the Company to be in breach of any statute, legislation or other legal requirement affecting the provision of the Services or the Company's recruitment services.
- 6.5 The Client will immediately notify the Company of any claim made by or on behalf of the Contractor (including the Representative) against the Client whether arising under contract, tort, breach of statutory duty or any other breach of applicable legislation. The Client undertakes to give such information and assistance to the Company as it may request, and within any timeframe reasonably requested by the Company and at the Client's own cost, to avoid, dispute, resist, mitigate, compromise or defend any such complaint or claim.
- 6.6 The Client warrants that it shall co-operate with the Company in order to determine any information required to ensure compliance with the AWR in respect of the Assignment, including but not limited to any information about permanent employee comparators at the Client Site. The Client will comply with its obligations under Regulation 12 (Rights of agency workers in relation to access to collective facilities and amenities) and 13 (Rights of agency workers in relation to access to employment) of the AWR. The Client shall indemnify the Company in respect of any loss or damage suffered by the Company as a result of any liability under the AWR, which can reasonably be attributed to inaccurate information provided by the Client or any other act, error, or omission of the Client.

## **7 Invoicing and Payments**

- 7.1 The Company shall be entitled to the Fees detailed in the Assignment Schedule for Services performed by the Contractor during the Standard Service Week. VAT shall be payable in addition to the Contract Rate at the currently prescribed rate as at the date an invoice is raised.
- 7.2 The Client will not be charged Fees when Services are not performed during the Assignment, whether arising due to holidays, illness or other absence of the Contractor and the Representative. However, the Client will be liable to pay Fees with respect to an Assignment where the Contractor and Representative are available to perform the Services, but the Client does not require the Services to be provided for any periods during the Assignment. The Fees in such circumstances will be calculated by reference to the periods detailed in the Assignment Schedule.
- 7.3 The Company shall invoice the Client on a weekly or monthly basis (at the Company's discretion) in arrears for all Services performed by the Contractor during the previous billing period. The Company shall be entitled, at its option, to submit invoices to the Client by electronic means. The Company's invoices shall be supported by weekly or monthly Records of Work. The Client shall promptly verify and approve all Records of Work (whether by manual signature to or electronic approval through any online approval system provided by the Company) that are presented to the Client by the Company or Contractor, which relate to the Services provided. The approval of the Client of any Records of Work (whether completed manually or electronically) shall constitute acceptance by the Client that the Services have been performed to the satisfaction of the Client (both in terms of the amount of time dedicated to and the quality of the Services).
- 7.4 If the Client is unable to approve a Record of Work provided by the Contractor because the Client disputes the Services provided, the Client shall inform the Company at its earliest convenience and shall co-operate fully and in a timely fashion with the Company to enable the Company to establish what Contractor Services were performed by the Contractor. Failure to approve the Record of Work (whether manually or electronically) does not alter the Client's obligation to pay the Fees in relation to the Contractor Services performed. The Company reserves the right to invoice the Client for an unsigned Record of Work if in the opinion of the Company the Client has unreasonably refused to approve the Record of Work. In cases of unsuitable work the Client should apply the provisions of clause 10.3 below.
- 7.5 Expenses incurred by the Contractor in the course of performing the Services, which have been authorised in advance by the relevant line manager of the Client and which are supported by valid receipts or similar documentation, shall also be charged by the Company. All expenses charges are subject to (a) the addition of such taxes and duties, as may from time to time be imposed by local or national governments; and (b) an administrative uplift charge of 2% which will be levied by the Company at its discretion. The Client understands that the Contractor may not be reimbursed by the Company for authorised expenses incurred, unless and until the Client has reimbursed the Company for the corresponding expense claim.
- 7.6 The Company's invoices in respect of Fees (based on the relevant Records of Work), any expenses, and any applicable VAT are payable by the Client within 15 days of the date of invoice.
- 7.7 In the event that any invoice submitted by the Company is not paid by the Client by the due date for payment set out in Clause 7.6 above, the Company shall immediately be entitled to levy the following charges: (i) a one-off late payment charge, equivalent to 5% of the value of the unpaid invoice amount that has not been settled by the due date; and/or (ii)

interest and associated charges as prescribed by the Late Payment of Commercial Debts (Interest) Act 1998 as amended by the Late Payment of Commercial Debts Regulations 2013. Such late payment charges will be payable immediately by the Client on notification by the Company.

- 7.8 There is no rebates payable in respect of the Fees. All invoices must be paid by the Client without any deduction, set off or counterclaim.
- 7.9 The Company will periodically notify the Client of any sum(s) paid in error to the Company within 12 months of any such payment(s) being made and during such time, the Company will provide a refund, upon written request of any such payment(s) to the Client. After 12 months, from the date of the first notification, the Company will not provide any further notification and will not be liable for any refund and instead any sums will revert to the Company.
- 7.10 The Contractor assumes responsibility for the deduction and payment of taxes and national insurance contributions arising from the provision of the Services, and in particular with respect to the Representative pursuant to the Income Tax (Earnings and Pensions) Act 2003 or such other applicable income tax and social security regime in the jurisdiction in which the Services are performed.
- 7.11 To the extent that the AWR applies to the provision of the Services, the Company will seek to determine the Relevant Terms and Conditions (defined under AWR) with the Client prior to the Start Date (wherever practically possible) but in any event no later than the end of the Qualifying Period (defined in the AWR). In the event that any variation to the Fee is required in order to comply with the AWR, the Company shall issue a notice of variation to the Assignment Schedule confirming the revised Fees which shall take effect from the day after the end of the Qualifying Period.

## **8 Liability and Insurance**

- 8.1 Whilst every effort is made by the Company to give satisfaction to the Client by ensuring reasonable standards of skill, integrity and reliability from the Contractors/Representative introduced and supplied hereunder, no liability will be accepted by the Company for any losses, expense, damage, delay, costs or compensation of any nature whatsoever, which may be suffered by the Client and which arise from any act or omission, negligent or otherwise, of any Contractor (including any Representative) supplied for Assignments at the Client.
- 8.2 The Company's total aggregate liability to the Client, other than for death or personal injury caused by the Company's negligence or for any other liability which cannot be excluded or limited in law, for any losses, expense, damage, delay, costs, fines, penalties or compensation of any nature whatsoever, which may be suffered by the Client and which arise from any breach of contract or negligence of the Company, shall be limited to the total Fees payable by the Client to the Company in relation to the specific Assignment to which the claim relates.
- 8.3 Under no circumstances whatsoever shall the Company have any liability to the Client for loss of profit, loss of business, loss of revenue, loss of goodwill, loss of anticipated savings or bargain, loss or corruption of data or software, or for any category of indirect, special or consequential loss.
- 8.4 The Company shall ensure the provision of adequate and suitable policies of Employers Liability Insurance, Public and Products Liability Insurance and Professional Indemnity Insurance, to cover the performance and liabilities of the Company under this Agreement.
- 8.5 Without prejudice to the terms of Clause 8.1 above, in the event of any clear and unequivocal defects in the Services that have been caused by the Contractor, the Company shall use its reasonable efforts to require the Contractor to rectify at its own cost such defects as may be capable of remedy within a reasonable period from notification of such defects by the Client and unless otherwise specified in the Assignment Schedule such rectification shall be completed within a period of 10 working days from notification unless otherwise agreed in writing by the Client and the Company.

## **9 Confidentiality and Intellectual Property**

- 9.1 Both parties agrees that they shall keep confidential all information of a confidential or commercially sensitive nature that it obtains from the other party (or from any person acting on behalf of the other party), and shall use such confidential information solely to fulfil their respective obligations under these Terms and Conditions or as may be required by law.
- 9.2 For the purposes of this Clause 9, the following shall not be classified as confidential information:
- 9.2.1 information which is publicly known at the time of disclosure;
  - 9.2.2 information which, after disclosure by either party becomes publicly known other than through a breach of this Agreement;
  - 9.2.3 information which either party can demonstrate was already known to it prior to its disclosure by the other party;
  - 9.2.4 information which either party can show was developed independently by its own employees, agents or subcontractors, who were not aware of the information disclosed by the other party;
  - 9.2.5 information which either party can show was made available to it by a third party, who had the legal right to do so, and who had not imposed on that party any obligation of confidentiality.
- 9.3 The Company shall at the request of the Client procure that the Contractor and/or Representative sign such confidentiality agreement(s) in favour of the Client as the Client may reasonably require.
- 9.4 The terms of this Agreement are confidential information. The Client may not enter into direct negotiations or discussions with the Contractor or the Representative with regard to charges, income, contract duration or termination without the express written consent of the Company.

- 9.5 All property, software and other materials supplied by the Client during the term of this Agreement shall at all times remain the property of the Client.
- 9.6 Upon payment by the Client for the Services, all copyright, trade marks, patents, design rights and any other intellectual property rights deriving from the Services carried out by the Contractor and its Representative (the "Works"), shall belong absolutely to the Client. Accordingly, the Company shall (and shall procure that the Contractor and the Representative shall) execute all such documents and do all such acts as the Client may from time to time require, in order to give effect to its rights pursuant to this clause and to vest legal and beneficial title to the Works in the Client.
- 9.7 The Company shall, where requested, procure the waiver of any moral rights by the Representative in respect of the Works or other Services performed.
- 9.8 Notwithstanding the above clauses, the Company, Contractor and Representative shall be entitled to continue to use and exploit methodologies, techniques, procedures and know-how employed in or associated with the Assignment.
- 10 Term and Termination**
- 10.1 The Services shall commence on the Start Date, and shall be continue to be provided during the Assignment Term up to the End Date (being the originally estimated completion date for the Assignment), on which date the Agreement shall automatically expire unless otherwise terminated earlier in accordance with the provisions of clause 10.2 to clause 10.5. Should the actual completion date be anticipated to be later than the End Date, the duration of the initial Assignment Term may be varied by the Company and the Client in writing and all other terms and conditions of this Agreement shall remain in full force and effect.
- 10.2 Unless otherwise set out in the Assignment Schedule, either party may terminate an Assignment without cause by giving the other party a minimum of 30 days notice in writing. Should the Client terminate an Assignment under this Clause 10.2 but fail to give the requisite period of notice then, without prejudice to any other remedy of the Company, the Client shall be responsible for the payment of Fees that would have been payable by it (calculated by reference to the periods specified in the Assignment Schedule) as if the full minimum notice had been given. The parties agree this payment is an enforceable liquidated damages clause and is not a penalty clause.
- 10.3 The Client undertakes to liaise with and give guidance to the Contractor sufficiently to ensure the Client's satisfaction in respect of the Services. However, if in the reasonable opinion of the Client, the Services or the behaviour of the Contractor and or Representative can be shown to be unsuitable or unsatisfactory during the term of the Assignment, then the Client may terminate the Assignment. The Client will be liable to pay the Company for Services performed by the unsatisfactory Contractor and or Representative up to the date of the said request. Any Contractor/Representative supplied under an Assignment will not be deemed to be unsatisfactory until the Company has received written confirmation from the Client detailing the specific areas which constitute the grounds for the Client's dissatisfaction.
- 10.4 As per its duties under the Conduct Regulations, the Company shall notify the Client immediately if it receives or otherwise obtains information which gives it reasonable grounds to believe that the Contractor/Representative supplied to the Client is unsuitable for the Assignment, and upon agreement with the Client shall terminate the Assignment forthwith.
- 10.5 Either party shall be entitled to terminate the Assignment forthwith by notice in writing to the other party, if the other party shall commit or allow to be committed:
- 10.5.1 any material or irremediable breach of any of these terms and conditions;
- 10.5.2 any other breach of these terms and conditions (not being material), where the party in breach shall fail to remedy any such breach (where capable of remedy) within 7 days after notice has been given by the innocent party to the party in breach requiring remedy of the same;
- 10.5.3 save for the bona fide purpose of solvent reconstruction or amalgamation, if any action, application or proceeding in respect of (i) a voluntary arrangement or composition or reconstruction of its debts; (ii) the presentation of an administration petition; (iii) its winding-up or dissolution; (iv) the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer or (v) any similar action, application or proceeding in any jurisdiction to which it is subject or if it is unable to pay its debts.
- 10.6 The Assignment may be suspended by either party if it is unable to commence, continue or completely perform its obligations hereunder by reason of force majeure including, without limitation, fire, flood, earthquake, terrorist activity, explosion, electrical failure, strikes, lock-outs, riots, civil commotion or state of national emergency, British Government action or any analogous cause whatsoever (whether or not of a similar nature to the foregoing) which is not reasonably within that party's control, provided that notice is promptly given to the other party of the suspension and stating the force majeure event relied upon. In the event that a period of force majeure continues for a period in excess of 30 days then the Assignment to which the force majeure event applies may be terminated forthwith upon mutual agreement of the parties.
- 10.7 Termination of this Agreement will be effective from the date that a valid termination notice under this Clause 10 is provided to the other party, either verbally or in writing. Where notice has been provided verbally, this must be confirmed in writing by the party giving notice at the earliest practical opportunity.
- 10.8 Termination under any of the provisions hereof shall be without prejudice to the rights and obligations of the parties arising hereto prior to, or as a result of, such termination.

**11 Transfer and Introduction Fees**

- 11.1 The Client acknowledges that the Company has undertaken considerable resource in sourcing and procuring the Contractor for the Client in the performance of its recruitment services. The Client therefore agrees that if the Contractor and or any Representative) is Engaged either within 6 months of the Contractor and/or the Representative having been introduced to the Client (but not supplied to the Client), during the currency of the Assignment, or within 6 months after the expiry or termination of the Assignment (including any agreed extension of the Assignment) by:
- 11.1.1 the Client;
  - 11.1.2 any of the Client's Group for whom the Contractor and/or the Representative performed the Contractor Services;
  - 11.1.3 any End Client for whom the Contractor and/or the Representative performed the Contractor Services; or
  - 11.1.4 any third party to whom the Contractor and or the Representative has been introduced by the Client (which may include any member of the Client's Group);

the Client shall notify the Company within 5 days of the date of any offer or acceptance of any Engagement and pay an introduction fee or transfer fee to the Company of 25% of the Remuneration payable to the Contractor and or Representative.

- 11.2 Any fee under this clause 11, where due shall be payable as per the payment terms set down in Clause 7.6 and any late payment of the same shall be subject to the remedies set down in Clause 7.7. The parties agree this payment is an enforceable liquidated damages clause to protect the Company's legitimate business interests in retaining its right to supply Contractors, and is not a penalty clause.
- 11.3 No refund of any introduction fee or transfer fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any introduction fee or transfer fee due.
- 11.4 It is acknowledged by the Client that the Contractor and the Representative will normally have opted out of the Conduct Regulations and therefore the statutory provisions therein with respect to transfer and introduction fees do not apply to the Assignment. However, in the event that the Contractor and Representative have not opted out of the Conduct Regulations, the defined period referred to in regulation 10(5) of the Conduct Regulations shall apply to the fee provisions in this clause 11.

## 12 Miscellaneous

- 12.1 The Company enters into this Agreement in its capacity as an employment business, in the context of the Conduct Regulations.
- 12.2 Subject to Clause 10.7, any notice required to be given hereunder shall be sent by either (i) pre-paid first class post (ii) registered post (iii) recorded delivery post (iv) facsimile transmission (v) e-mail transmission. Notice served by post under methods (i), (ii) or (iii) shall be sent to the party to whom it is addressed at their last known address or place of business and shall be deemed to be served on the day following or if that day be a Sunday the second day following that upon which it shall be shown to have been posted. Notice served by facsimile or e-mail transmission under methods (iv) and (v) shall be sent to the party to whom it is addressed at their last known facsimile number or e-mail address respectively, and shall be deemed to be served on the same day unless it can be shown that the facsimile or email transmission did not successfully reach its intended destination.
- 12.3 Neither party shall, without the prior written consent of the other, assign, sub-contract or transfer its rights and obligations under this Agreement save that the Company shall be entitled to assign its rights and obligations under this Agreement to any of its associate or subsidiary companies within the Interquest Group (to be interpreted in accordance with the definitions of subsidiary and associate under the Companies Act 2006), or to any purchaser of the whole or a substantial part of its business.
- 12.4 If any provision or term of this Agreement shall become or be declared illegal, invalid or unenforceable for any reason, including but not limited to by reason of the provisions of any legislation or other provisions having the force of law or by reason of any Court or other body or authority having jurisdiction over the parties to this Agreement, but such provision or term would be held to be valid if part of the wording were either amended or deleted, then such provision shall apply with such deletions/amendments as may be necessary to make it valid. Any provision or term which cannot be made valid in such way shall be divisible from this Agreement, and shall be deemed to be deleted from this Agreement, provided always that if any such deletion substantially affects or alters the commercial basis of this Agreement then the parties shall negotiate in good faith to amend or modify the provisions and terms of this Agreement as necessary or desirable in the circumstances.
- 12.5 Should either party fail or delay to exercise any right or remedy, or part of a right or remedy under these Terms, it will not waive that right or remedy or the further exercise of that right or remedy, or the exercise of any other right or remedy, against the other party.
- 12.6 Both parties agree that none of the terms and conditions of this Agreement shall be enforceable by a third party by virtue of the Contracts (Rights of Third Parties) Act 1999 (save as expressly set out in the Agreement), and this Agreement can be rescinded or varied by agreement between the parties (subject to the terms of Clause 12.7 below) without the consent of any such third party. For the purposes of this clause a third party means any person who is not party to this agreement.
- 12.7 The Company may vary the Assignment Schedule and/or this Agreement on giving the Client written notice (which shall include the detail of the variation and the date upon which the variation takes effect) in order to comply with any change in, additional or new obligations imposed (and whether applicable retrospectively) by statute or by virtue of any other legal obligations including but not limited to legislation affecting the recruitment industry.
- 12.8 This Agreement shall be deemed to have been accepted by the Client either upon the Client signing this Agreement or an Assignment Schedule, upon the Client receiving a copy of this Agreement and subsequently receiving the Services or other

- services from the Contractor and or Representative, or upon signature of a Record of Work or payment of an invoice for the Services, whichever event occurs the earlier.
- 12.9 Whilst it is intended by the parties that the terms of this Agreement are representative of the working relationship between the Contractor, the Company and the Client, the Company makes no representation nor does it accept any responsibility for ensuring that these terms are in fact an accurate reflection of the working relationship between the Client and the Contractor and Representative.
- 12.10 In the event of any conflict between the terms and conditions herein and an Assignment Schedule, the terms and conditions of business herein shall prevail to the extent of the conflict unless the terms set out in the Assignment Schedule are expressed to override conflicting terms in the terms and conditions.
- 12.11 This Agreement is governed by the laws of England and is subject to the exclusive jurisdiction of the English Courts (other than for enforcement proceedings, for which the English courts shall have non-exclusive jurisdiction).

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