

Consultancy Agreement

Agreement with a Self Employed Consultancy who has not Opted Out of the Conduct Regulations (Outside IR35)

THE PARTIES

- (1) [[CANDIDATE.LTD.COMPANY]] Limited (registered company no. [[CANDIDATE.LTD.COMPANY.NO]]) of [[CANDIDATE.LTD.COMPANY.ADDRESS.FLAT]] (and save where otherwise indicated, includes any third party to whom the provision of consultancy services is assigned or sub-contracted with the prior approval of the Client) (“**the Consultancy**”).
- (2) Blueberry Creatives Limited (registered company no. 04379194) of 10 Redan House, Redan Place, London, W2 4SA (“**the Employment Business**”).

RECITALS

(A) The Consultancy carries on the business of the provision of consultancy services and has agreed to provide the services specified in the Assignment Details Form (“**the Assignment Details Form**”) (“**the Consultancy Services**”).

(B) The Employment Business has requested the Consultancy and the Consultancy has agreed with the Employment Business, to supply the Consultancy Services to the Client on the terms and 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 engaged by the Employment Business to provide the Consultancy Services to the Client;
- “**AWR**” means the Agency Workers Regulations 2010;
- “**Client**” means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) requiring the Consultancy Services and identified in the Assignment Details Form;
- “**Companies Acts**” means the Companies Acts 1985, 1989 and 2006;
- “**Conduct Regulations**” means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
- “**Confidential Information**” means any and all confidential commercial, financial, marketing, technical or other information or data of whatever nature relating to the Client or Employment Business or their business or affairs (including but not limited to this Agreement, data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information concerning the Assignment) in any form or medium whether disclosed or granted access to, whether in writing, orally or by any other means, provided to the Consultancy or any third party in relation to the Assignment by the Client or the Employment Business or by a third party on behalf of the Client whether before or after the date of this Agreement together with any reproductions of such information in any form or medium or any part(s) of such information;
- “**Consultancy Fees**” means the fees payable to the Consultancy for the provision of the Consultancy Services as set out in the Assignment Details Form. For the avoidance of doubt, the Consultancy Fees include the agreed fees for the Consultancy Services, any expenses or disbursements authorised by the Client and VAT charged at the applicable rate;
- “**Consultancy Staff**” means such of the Consultancy’s employees, workers, officers, or representatives provided to perform 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 or any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data;
- “**FOIA**” means the Freedom of Information Act 2000;
- “**Inside IR35**” means an Assignment which meets the provisions of Section 61M ITEPA;
- “**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 and/or 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, license, franchise or partnership arrangement, or any other engagement; and “Engage”, “Engages” and “Engaged” shall be construed accordingly;
- “**IR35 Legislation**” means Chapter 8 of Part 2 ITEPA and the Social Security Contributions (Intermediaries) Regulations 2000;
- “**IR35 Status Decision**” means the Client’s decision on the application of the Intermediaries Legislation to the Assignment in accordance with Section 61T ITEPA, to be provided in writing to the Employment Business;
- “**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; and “Loss” shall be construed accordingly
- “**Minimum Rate**” means [[RATE.PAY]] being the minimum rate of pay that the Employment Business reasonably expects to achieve, for all hours worked by the Consultancy;
- “**MSC Legislation**” means section Chapter 9 of Part 2 of ITEPA;
- “**NICs Legislation**” means legislation regarding the deduction and payment of national insurance contributions including in particular the Social Security (Categorisation of Earners) Regulations 1978 and the Social Security Contributions (Intermediaries) Regulations 2000;
- “**Outside IR35**” means an Assignment which does not meet the provisions of Section 61M ITEPA;
- “**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;
- “**Public Authority**” means a public authority (a) as defined in the FOIA and (b) as further defined in Section 61L ITEPA;
- “**Relevant Period**” means whichever ends the later of (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 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;
- “**Reporting Requirements**” means the requirements of the Income Tax (Pay as you Earn) (Amendment No. 2) Regulations 2015;
- “**Specified Intermediary**” means the party required to submit the report to HMRC in compliance with the Reporting Requirements;
- “**Transfer Fee**” means a fee payable by the Client to the Employment Business if the Client or any third party wishes to Engage the Consultancy or Consultancy Staff permitted under Regulation 10 of the Conduct Regulations; and
- “**Transparency Regulations**” means the Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015; and
- 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 the 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 Assignment Details Form (“**the Agreement**”) constitutes the entire agreement between the Employment Business and the Consultancy and governs the Assignment undertaken by the Consultancy with the Client. This Agreement shall prevail over any terms put forward by the Consultancy.

2.2. The Consultancy is engaged on a contract for services by the Employment Business on the terms set out in this Agreement. For the avoidance of doubt this Agreement shall not be construed as a contract of employment between any Consultancy Staff or any representative of the Consultancy supplied to carry out the Assignment and either the Employment Business or the Client and any of the liabilities of an employer arising out of the Assignment shall be the liabilities of the Consultancy.

2.3. No variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between the Employment Business and the Consultancy and set out in writing and a copy of the varied Agreement is given to the Consultancy no later than 5 business days following the day on which the variation was made stating the date on or after which such varied Agreement 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 or supplying the Consultancy for Assignments with its Clients.

3. RELATIONSHIP BETWEEN THE EMPLOYMENT BUSINESS AND THE CONSULTANCY AND BETWEEN THE CLIENT AND THE CONSULTANCY

- 3.1. The Employment Business is not obliged to offer Assignments to the Consultancy and the Consultancy is not obliged to accept any Assignment. Both parties acknowledge that there is no intention to create mutuality of obligation during any Assignment or between Assignments.
- 3.2. The Consultancy acknowledges to the Employment Business that its services are supplied to the Employment Business as an independent contractor and that accordingly the responsibility of complying with all statutory and legal requirements relating to the Consultancy Staff (including but not limited to matters of taxation and compliance with the immigration laws applicable to the jurisdiction in which the Consultancy Services are provided) shall fall upon and be discharged wholly and exclusively by the Consultancy.
- 3.3. Nothing in this Agreement shall render any member of the Consultancy Staff an employee or worker of either the Employment Business or the Client. The Consultancy shall ensure that none of the Consultancy Staff holds themselves out as an employee or worker of either the Employment Business or the Client. In the event that any person should seek to establish any liability or obligation upon the Employment Business on the grounds that the Consultancy Staff are an employee/employees or worker/workers of the Employment Business or the Client, the Consultancy shall upon demand indemnify the Employment Business and/ or the Client and keep them indemnified in respect of any such liability or obligation and any related Losses which the Employment Business or Client shall incur.
- 3.4. The Consultancy acknowledges that no member of the Consultancy Staff is an agency worker as defined under the AWR and that the AWR do not apply in relation to this Agreement or any Assignment under this Agreement. The Consultancy shall indemnify and keep indemnified the Employment Business (or, as the case may be, the Client) against any Losses the Employment Business (or the Client) may suffer or incur as a result of any claim made by or on behalf of any member of the Consultancy Staff under the AWR.
- 3.5. If before or during an Assignment, during the Relevant Period or within 12 months from the end of the last Assignment the Client wishes to Engage the Consultancy or any Consultancy Staff directly or through another employment business, the Consultancy acknowledges that the Employment Business will be entitled either to charge the Client a Transfer Fee or to agree to a Period of Extended Hire with the Client at the end of which the Consultancy or the Consultancy Staff (as appropriate) may be Engaged directly by the Client or through another employment business without further charge to the Client. In addition the Employment Business will be entitled to charge a Transfer Fee to the Client if the Client introduces the Consultancy or any Consultancy Staff to a third party (other than another employment business) who subsequently Engages the Consultancy or any Consultancy Staff before or during an Assignment or within the Relevant Period or within 12 months from the end of the last Assignment.
- 3.6. The Consultancy shall provide the Consultancy Services and subject to the prior written approval of the Client (which will not be unreasonably withheld or delayed) 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 this Agreement.
- 3.7. Save as otherwise stated in this Agreement, the Consultancy shall be entitled to supply its services to any third party during the term of this Agreement provided that this in no way conflicts with or is to the detriment of the supply of its services to the Client or amounts to a breach of this Agreement.

Application of the Intermediaries legislation to this Agreement

- 3.8. The Consultancy acknowledges that the client is a Public Authority.
- 3.9. Neither the Consultancy nor the Consultancy Staff work under (or subject to the right of) supervision, direction or control by any person as to the manner in which they provide the Consultancy Services. Accordingly, the Consultancy shall be permitted to determine how it will provide the Consultancy Services and, subject to complying with any reasonable operational requirements of the Client, will have the flexibility to determine the number of hours required to provide, and the times during which it will provide, the Consultancy Services. The Consultancy will be at liberty to determine the location at which the Consultancy Services will be provided, 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 that site.

4. WARRANTIES PROVIDED BY THE CONSULTANCY

- 4.1. The Consultancy warrants to the Employment Business that:
 - 4.1.1. by entering into and performing its obligations under this Agreement it will not thereby be in breach of any obligation which it owes to any third party;
 - 4.1.2. the Consultancy Staff have the necessary skills and qualifications to perform the Consultancy Services;
 - 4.1.3. the Consultancy and the Consultancy Staff providing the Consultancy Services have not opted out of the Conduct Regulations and that the Consultancy will only supply Consultancy Staff to perform the Consultancy Services who have not opted out of the Conduct Regulations; and further that any person to whom the performance of the Consultancy Services are assigned or sub-contracted has not opted out of the Conduct Regulations;
 - 4.1.4. the Consultancy is a personal service company but it is not a "managed service company" as defined in either section 61B or section 339A of ITEPA and that it is compliant in all respects with ITEPA (including specifically both the IR35 Legislation and the MSC Legislation) and the NICs Legislation;
 - 4.1.5. the Consultancy is incorporated in the UK and that all directors are resident in the UK for tax purposes;
 - 4.1.6. the Consultancy will pay the Consultancy Staff only into a nominated UK bank account in the individual's name;
 - 4.1.7. all information the Consultancy provides to the Employment Business in order to comply with the Reporting Requirements and clauses 5.1.11 and 5.1.11 is complete and accurate.
- 4.2. The Consultancy shall procure that the Consultancy Staff, any sub-contractor or assignee performing the Consultancy Services warrant that they are not and do not operate as "managed service companies" as defined in section 61B and section 339A of ITEPA but that they are personal service companies which are compliant in all respects with ITEPA (including specifically the IR35 Legislation and the MSC Legislation) and the NICs legislation.
- 4.3. The Consultancy warrants to the Employment Business that the Consultancy Staff have consented in writing to the Client, the Employment Business and any other intermediary involved in supplying the services of the Consultancy and the Consultancy Staff to the Client (now or in the future) Client:
 - 4.3.1. processing the Consultancy Staff's personal data for purposes connected with the provision of the Consultancy Services and pursuant to this Agreement; and
 - 4.3.2. exporting and/or processing the Consultancy Staff's personal data in jurisdictions outside the European Economic Area for purposes connected with the performance of this Agreement.
- 4.4. Further to clause 3.9, the Consultancy warrants that the Consultancy Staff do not work under (or are not subject to the right of) supervision, direction or control of any person as to the manner in which they provide the Consultancy Services. The Consultancy further warrants that it shall advise the Employment Business in writing immediately if the Consultancy Staff work under (or subject to the right of) supervision, direction or control of any person.

5. THE CONSULTANCY'S OBLIGATIONS

- 5.1. The Consultancy agrees on its own part and on behalf of the Consultancy Staff as follows:
 - 5.1.1. to observe any relevant rules and regulations of the Client's establishment or the premises where the Consultancy Services are being performed to which attention has been drawn or which the Consultancy might reasonably be expected to ascertain; including but not limited to those relating to health and safety to the extent that they are reasonably applicable to the Consultancy and the Consultancy Staff;
 - 5.1.2. to take all reasonable steps to safeguard its own safety, the safety of the Consultancy Staff and the safety of any other person who may be affected by actions of the Consultancy Staff whilst on the Assignment;
 - 5.1.3. to comply with the Data Protection Act 1998 in respect of any personal data which the Consultancy is granted access to for the purpose of or by reason of the performance of the Consultancy Services;
 - 5.1.4. not at any time to divulge to any person, nor use for its own or any other person's benefit, any Confidential Information relating to the Client's or the Employment Business' employees, business affairs, transactions or finances;
 - 5.1.5. not to engage in any conduct detrimental to the interests of the Employment Business and/or the Client which includes any conduct which could bring the Employment Business and/or the Client into disrepute and/or which results in the loss of custom or business for the Employment Business and/or the Client;
 - 5.1.6. not to commit any act or omission constituting unlawful discrimination against or harassment of any member of the Employment Business' or the Client's staff;
 - 5.1.7. not to sub-contract or assign to any third party any of the Consultancy Services which it is required to perform under the Assignment except in accordance with clause 3.6;
 - 5.1.8. to provide the Client and/or the Employment Business with any progress reports as may be requested from time to time;
 - 5.1.9. to notify the Employment Business forthwith in writing if it should become insolvent or if any of the circumstances set out in clauses 9.2.5 to 9.2.7 apply;
 - 5.1.10. to comply with all relevant legal obligations, including but not limited to ITEPA, the NICs Legislation, VAT legislation and the Companies Acts and all statutory obligations;
 - 5.1.11. to provide the Employment Business with all such information it may require to comply with (a) the Reporting Requirements where it is the Specified Intermediary or (b) any contractual obligations the Employment Business has to provide information to the Specified Intermediary (where it is a party other than the Employment Business) to enable the Specified Intermediary to comply with its Reporting Requirements;
 - 5.1.12. to provide the Employment Business on request, with any information required to comply with Transparency Regulations 2015.
 - 5.1.13. to notify the Employment Business in writing immediately if it becomes subject to a HMRC investigation or compliance activity including but not limited to any of ITEPA, the NICs legislation or VAT legislation;
 - 5.1.14. to update the Employment Business promptly where any of the information required under clauses 5.1.11 or 5.1.13 changes; and
 - 5.1.15. to notify the Employment Business immediately in writing if the circumstances of the Assignment change with the effect that the Assignment becomes or may become an Inside IR35 Assignment;

5.1.16. to provide at its own cost, subject to any agreement to the contrary specified in the Assignment Details Form all such necessary equipment as is reasonable for the adequate performance by the Consultancy Staff of the Consultancy Services.

5.1.17. unless otherwise instructed by the Employment Business, complete and submit to a person nominated by the Employment Business signed time-sheets, in writing or electronic format, confirming when the Consultancy Services were performed within 5 working days of the end of the week in which the Consultancy Services were performed; and

5.1.18. receive self billed invoices from the Employment Business and provide any appropriate supporting documents to the Employment Business in accordance with the terms of this Agreement.

5.2. If the Consultancy is unable for any reason to provide the Consultancy Services during the course of the Assignment, the Consultancy should inform the Employment Business as soon as is reasonably practicable but in any event, no later than 1 hour after it becomes aware of any event which renders it unable to provide the Consultancy Services so as to enable the Employment Business to discharge its obligations to the Client.

5.3. If, either before or during the course of an Assignment, the Consultancy becomes aware of any reason why it or the Consultancy Staff may not be suitable for an Assignment, the Consultancy shall notify the Employment Business without delay.

5.4. The Consultancy acknowledges that any breach of its obligations set out in this clause may cause the Employment Business to suffer Loss and that the Employment Business reserves the right to recover such Losses from the Consultancy.

6. THE EMPLOYMENT BUSINESS'S OBLIGATIONS

6.1. Throughout the term of this Agreement the Employment Business shall pay the Consultancy at least the Minimum Rate in accordance with clause 8.1 below.

6.2. The Employment Business shall provide the Consultancy with the following information:

6.2.1. the identity of the Client, and if applicable the nature of their business;

6.2.2. the date the Assignment is to commence and the duration or likely duration of the work;

6.2.3. the type of work, location and hours during which the Consultancy would be required to work;

6.2.4. the Consultancy Fees that will be paid and any expenses payable by or to the Consultancy;

6.2.5. any risks to health and safety known to the Client and the steps the Client has taken to prevent or control such risks; and

6.2.6. what experience, training, qualifications and any authorisation required by law or a professional body the Client considers necessary or which are required by law to work in the Assignment.

6.3. 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:

6.3.1. the Consultancy is being offered an Assignment in the same position as one in which the Consultancy had previously been supplied within the previous 5 business days and remains unchanged and such information has already been given to the Consultancy; or

6.3.2. subject to clause 6.4, the Assignment is intended to last for 5 consecutive business days or less and such information has previously been given to the Consultancy before and remains unchanged, the Employment Business needs only to provide written confirmation of the identity of the Client and the likely duration of the Assignment.

6.4. Where the provisions of clause 6.3.2 are met but the Assignment extends beyond the intended 5 consecutive business day period, the Employment Business shall provide such information set out in clause 6.2 to the Consultancy in paper or electronic form within 8 days of the start of the Assignment.

7. INVOICING

7.1 Upon completion of the Assignment or within 5 days of the Invoice Period specified in the Assignment Details Form the Consultancy shall submit and confirm, electronically via InTime, the time spent by the Consultancy in providing the Consultancy Services. A self billed invoice will be provided by the Employment Business to the Consultancy and will contain the following information;

a) Description of the Assignment to which the invoice relates, (including the name of the applicable Client);

b) Details of the time worked by the Consultancy on the Consultancy Services, to be specified in hours, days or weeks consistent with the Consultancy Fees payable;

c) The amount of the Consultancy Fee (plus VAT if applicable) and the calculation of the Consultancy Fees (ie the Consultancy Fee and other payments owed);

d) If the Consultancy is registered for VAT, information necessary to comply with the requirements for a valid VAT invoice; and

e) Any other information notified to the Consultancy reasonably required by the Employment Business.

7.2. If the Consultancy fails to submit and confirm times when the consultancy Services were performed within 5 days of the end of each Invoice Period, the Employment Business shall be authorised to submit and confirm hours on behalf of the Consultancy in connection with any Assignment, for which the Employment Business shall charge an administration fee of £5 plus VAT per timesheet (which fee shall be identified on the self billed invoice as an 'Invoice Fee' and which shall be deducted from the Consultancy Fee due to the Consultancy for that Assignment).

7.3. In the event of a self billed invoice being submitted by the Employment Business in accordance with clause 7.2 such timesheets and self billed invoices shall be deemed to be accepted by the Consultancy unless the Consultancy notifies the Employment Business of any problem or error with such invoice within 10 working days of the date such invoice is sent to the Consultancy.

7.1. Subject to clause 7.5 the Employment Business shall pay the Consultancy for all hours worked regardless of whether the Employment Business has received payment from the Client for those hours.

7.2. Where the Consultancy fails to submit a properly completed verification of execution of the assignment the Employment Business shall, in a timely fashion, conduct further investigations into the hours claimed by the Consultancy and the reasons that the Consultancy has failed to produce such verification. This may delay any payment due to the Consultancy.

7.3. The Employment Business shall make no payment to the Consultancy for work not carried out.

8. CONSULTANCY FEES

8.1. Subject to the submission of the Consultancy's invoice in accordance with clause 7 above, the Employment Business will pay the Consultancy Fees within 45 days of the creation of the Consultancy's invoice or upon receipt of funds from the Client, whichever is the sooner. The Employment Business shall pay to the Consultancy the Consultancy Fees for the Consultancy Services performed during the Assignment.

8.2. The Consultancy Fees shall be agreed prior to the commencement of the Assignment and shall be specified in the Assignment Details Form.

8.3. The Consultancy shall be responsible for any PAYE income tax and national insurance contributions and any other taxes and deductions payable in respect of the Consultancy Staff for the provision of the Consultancy Services.

8.4. The Employment Business will pay the Consultancy Fees to the Consultancy and not to any third party or member of the Consultancy Staff or any sub-contractor or assignee. The Employment Business will pay the Consultancy Fees into a UK business bank account only.

8.5. The Employment Business shall not be obliged to pay the Consultancy for any periods during which the Consultancy Services are not provided, whether this is due to the Consultancy being unable to provide the Consultancy Services or where the Client does not require the Consultancy Services or otherwise in respect of holidays, illness or absence of the Consultancy Staff.

8.6. The Consultancy shall bear the cost of any training which the Consultancy Staff may require in order to perform the Consultancy Services.

9. TERM AND TERMINATION

9.1. This Agreement shall commence on the date set out in the Assignment Details Form and shall continue until completion of the Consultancy Services to the reasonable satisfaction of the Client at which time this Agreement shall expire automatically unless previously terminated by either the Employment Business or the Consultancy giving the other party the period of notice specified in the Assignment Details Form.

9.2. Notwithstanding clauses 9.1 and 9.3 of this Agreement, the Employment Business may without notice and without liability instruct the Consultancy to cease work on the Assignment at any time, where:

9.2.1. the Consultancy has acted in breach of the rules and regulations applicable to third parties providing services to the Client; or

9.2.2. the Consultancy has committed any serious or persistent breach of any of its obligations under this Agreement; or

9.2.3. the Client reasonably believes that the Consultancy has not observed any condition of confidentiality applicable to the Consultancy from time to time; or

9.2.4. the Client is dissatisfied with the Consultancy's provision of the Consultancy Services and has terminated the Assignment; or

9.2.5. either the Client or the Consultancy 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

9.2.6. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of either the Client or the Consultancy; or

9.2.7. an order is made for the winding up of either the Client or the Consultancy, or where either the Client or the Consultancy 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

- 9.2.8. the Employment Business suspects or has notice that that the Consultancy has not complied with any of the requirements of ITEPA, the NICs legislation or VAT requirements; or
- 9.2.9. the Employment Business know or suspects, that the circumstances of the Assignment have or will change with the effect that the Assignment ceases to be an Outside IR35 assignment; or
- 9.2.10. any member of the Consultancy Staff is suspected of any fraud, dishonesty or serious misconduct; or
- 9.2.11. the Consultancy is unable to perform the Consultancy Services for 2 days or more; or
- 9.2.12. 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; or
- 9.2.13. either of the Client or the Consultancy 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; or
- 9.2.14. the Consultancy fails to comply with clause 13.3.
- 9.3. The Consultancy acknowledges that the continuation of the Assignment is subject to and conditioned by the continuation of the contract entered into between the Employment Business and the Client. In the event that the contract between the Employment Business and the Client is terminated for any reason the Assignment shall cease with immediate effect without liability to the Consultancy.
- 9.4. Failure by the Consultancy to give notice of termination as required in the Assignment Details Form shall constitute a breach of contract and shall entitle the Employment Business to claim damages from the Consultancy for any resulting Losses suffered by the Employment Business.

10. INTELLECTUAL PROPERTY RIGHTS

The Consultancy acknowledges that all copyright, trademarks, patents and other intellectual property rights deriving from the Consultancy Services carried out by the Consultancy and the Consultancy Staff and any third party to whom this Agreement is 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 Consultancy shall (and shall procure that any relevant member of the Consultancy Staff shall) execute all such documents and do all such acts as the Employment Business shall from time to time require in order to give effect to its rights pursuant to this clause.

11. CONFIDENTIALITY

- 11.1. In order to protect the confidentiality and trade secrets of any Client and/or of the Employment Business without prejudice to every other duty to keep secret all information given to it or gained in confidence the Consultancy agrees on its own part and on behalf of the Consultancy Staff as follows:
- 11.1.1. not at any time whether during or after the Assignment (unless expressly so authorised by the Client or the Employment Business as a necessary part of the performance of its duties) to disclose to any person or to make use of any of the trade secrets or Confidential Information of the Client or the Employment Business with the exception of information already in the public domain;
- 11.1.2. to deliver up to the Client or the Employment Business (as directed) at the end of the Assignment all documents and other materials belonging to the Client (and all copies) which are in its possession including documents and other materials created by it or the Consultancy Staff during the course of the Assignment;
- 11.1.3. not at any time to make any copy, abstract, summary or précis of the whole or any part of any document or other material belonging to the Client except when required to do so in the course of its duties under the Assignment in which event any such item shall belong to the Client or the Employment Business as appropriate.

12. COMPUTER EQUIPMENT WARRANTY

The Consultancy shall ensure that any computer equipment and associated software which it provides to its Staff for the purpose of providing the Consultancy Services contains anti-virus protection with the latest released upgrade from time to time.

13. CONTRACT MONITORING AND AUDITS

- 13.1. The Employment Business reserves the right to audit the Consultancy on a quarterly basis to ensure compliance with this Agreement and all statutory requirements in relation to all Consultancy Staff supplied to provide the Consultancy Services including in particular but not limited to ITEPA and the NICs legislation.
- 13.2. To assist the Employment Business in its audit the Consultancy will:
- 13.2.1. maintain such records as are necessary to comply with this Agreement and all statutory requirements in relation to all Consultancy Staff supplied to provide the Consultancy Services, and will provide copies of the same to the Employment Business on request.
- 13.2.2. provide the Employment Business with access to its premises and all records relating to all Consultancy Staff supplied to provide the Consultancy Services.
- 13.3. If having conducted an audit, the Employment Business requires the Consultancy to take any action the Consultancy shall take such action within the time period specified by the Employment Business. If the Consultancy fails to take such action or to rectify the matter to the Employment Business's satisfaction, the Employment Business can terminate this Agreement in accordance with clause 9.

14. LIABILITY

- 14.1. The Consultancy shall:
- 14.1.1. be liable for any and all Losses or injury to any party resulting from the deliberate and/or negligent acts or omissions of the Consultancy or Consultancy Staff during an Assignment, or for the acts or omissions of any assignee or sub-contractor to whom the Consultancy assigns or sub-contracts the performance of the Consultancy Services, during an Assignment;
- 14.1.2. obtain adequate employer's liability insurance, public liability insurance, professional indemnity insurance and any other suitable policies of insurance as may be required from time to time as set out in the Assignment Details Form in respect of the Consultancy and the Consultancy Staff. The Consultancy shall maintain such insurances for the duration of the Assignment and following termination of the Assignment for the period specified. The Consultancy shall make a copy of the policy available to the Employment Business upon request; and
- 14.1.3. be liable for any defects arising in relation to the Consultancy Services and shall rectify at its own cost such defects as may be capable of remedy within a reasonable period from notification of such defects by either the Employment Business or the Client.
- 14.2. For the avoidance of doubt, the Employment Business will not be liable to any of the Consultancy or the Consultancy Staff for any Losses they may incur as a result of the Client's IR35 Status Decision.

15. INDEMNITY

Save to the extent any such Losses result solely from any act or omission of the Employment Business or the Client, the Consultancy shall indemnify and keep indemnified the Employment Business against any Losses suffered or 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 the IR35 Legislation and/or any of the provisions of ITEPA or the NICs Legislation (and/or any supporting or consequential secondary legislation relating thereto)).

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. 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.

18. DISCLAIMER

The Employment Business makes no representation nor does it accept any responsibility for ensuring that the terms of this contract are an accurate reflection of the relationship between the Client and the Consultancy. Furthermore the Employment Business accepts no liability to indemnify the Consultancy for any Losses incurred by the Consultancy whether by reason of tax or other statutory or contractual liability to any third party arising from the Assignment.

19. THIRD PARTY RIGHTS

19.1. Save as set out in clause 19.2, none of the provisions of this Agreement is intended to be for the benefit of or enforceable by third parties (other than permitted assignees who shall be entitled to enforce the provisions of this Agreement as if original parties to it) and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

19.2. The Client shall be entitled to rely on and enforce the provisions of clause 3.4 and the indemnities given by the Consultancy in favour of the Client, notwithstanding that the Client is not a party to this Agreement.

20. GOVERNING LAW AND JURISDICTION

This Agreement shall be construed in accordance with the laws of England & Wales and all disputes, claims or proceedings between the parties relating to the validity, construction or performance of this Agreement shall be subject to the exclusive jurisdiction of the Courts of England & Wales.

I confirm I am authorised to sign this Agreement for and on behalf of the Consultancy.

Signed on for and on behalf of [[CANDIDATE.LTD.COMPANY]] Ltd. *(the Consultancy)*

[print name here]

Date