

# Agreement For The Engagement And Provision Of Services

This agreement is made on [[current\_date]] ("Effective Date")

## BETWEEN

- (1) **Blueberry Creative Consultants Limited**, a company incorporated in England and Wales under company number 04379194 and whose registered office is at is 10 Redan House 27 Redan Place, London, W2 4SA ("Employment Business"); and
- (2) **[Name of Umbrella Company]**, a company incorporated in England and Wales under company number [insert registered company number] and whose registered office is at [insert registered office address] ("Contractor").

IT IS AGREED as follows:

## 1. Interpretation and Definitions

1.1. In this Agreement:

- 1.1.1 Unless the context otherwise requires, references to the singular include the plural;
- 1.1.2 Assignment Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement.
- 1.1.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and all subordinate legislation; and
- 1.1.4 A reference to writing or written includes fax and email.

1.2. Headings contained in this Agreement are for reference purposes only and will not affect the intended meanings of the clauses to which they relate.

1.3. In this Agreement –

- "**Agreement**" means the terms and conditions set out herein together with any issued Assignment Schedule to these terms;
- "**Assignment**" means the period during which the Contractor provides the Services as set out in an Assignment Schedule;
- "**Assignment Schedule**" means the schedule agreed between the Employment Business and the Contractor for each Assignment containing the particulars of the Assignment and the Services;
- "**AWR**" means the Agency Workers Regulations 2010;
- "**Client**" means the person, firm or corporate body together with any subsidiary or associated company as defined by section 1159 of the Companies Act 2006 requiring the Services, and includes any third party to whom the Representative provides services pursuant to this Agreement on behalf of the Client;
- "**Conduct Regulations**" means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended from time to time) and references to a particular Regulation are references contained therein;
- "**Data Controller**" means "controller" in accordance with the General Data Protection Regulation (EU) 2016/679;
- "**Data Protection Legislation**" means all applicable laws and regulations, as amended or updated from time to time, in the United Kingdom relating to data protection, the processing of personal data and privacy, including without limitation,(a) the Data Protection Act 2018; (b) the General Data Protection Regulation (EU) 2016/679; (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and (d) any legislation that replaces or converts into United Kingdom law the General Data Protection Regulation (EU) 2016/679, the proposed Regulation on Privacy and Electronic Communications or any other law relating to data protection, the processing of personal data and privacy resulting from the United Kingdom leaving the European Union;
- "**Data Subject**" means as set out in, and will be interpreted in accordance with Data Protection Legislation;
- "**Off-Payroll**" means amendments to Chapter 8 and Chapter 10 Part 2 of Income Tax (Earnings and Pensions) Act 2003;
- "**Opted-Out**" means opted-out of the Conduct Regulations in accordance with Regulation 32(9);

“**Personal Data**” means as set out in, and will be interpreted in accordance with Data Protection Legislation;

“**Personal Data Breach**” means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed in connection with this Agreement;

“**Process**” means as set out in, and will be interpreted in accordance with Data Protection Legislation and “**Processed**” and “**Processing**” will be construed accordingly;

“**Qualifying Period**” means as defined within regulation 7 of the AWR;

“**Representative**” means the employee of the Contractor, specified in the Assignment Schedule, who renders the Services on behalf of the Contractor;

“**Restricted Period**” means the twelve months **following** the end (howsoever arising) of the Assignment; and

“**Services**” means the services to be performed by the Representative for the benefit of the Client pursuant to this Agreement.

## 2. The Services

- 2.1. Following a request from the Client, the Employment Business has requested the Contractor and the Contractor has agreed with the Employment Business to provide the Services to the Client as detailed within an Assignment Schedule, on the terms and conditions of this Agreement.
- 2.2. The Contractor will procure that the Services will be undertaken by the Representative. The Representative will be employed by the Contractor and Off-Payroll is not in scope of this Agreement.
- 2.3. The Employment Business and the Contractor shall agree an Assignment Schedule (or confirm their agreement in an Assignment Schedule) specifying the Client, the fee payable by the Employment Business, the Representative, the Services, such expenses as may be agreed, any notice period and any other relevant information.
- 2.4. Save as otherwise stated in this Agreement, the Contractor and the Representative will be entitled to supply its/their services to any third party during the term of this Agreement provided that this in no way compromises or is not to the detriment of the supply of the Services, and provided there is no conflict of interest.
- 2.5. The Contractor will use best endeavours to procure, including by means of inclusion in employment contract with the Representative, that the Representative will not, whether directly or indirectly through any company, partnership or person, solicit nor enter into any contract with the Client or with any third party introduced to the Representative by the Client with whom the Representative had material contact with during the Assignment, to provide any services of the same or a similar nature as the Services during the Assignment or during the Restricted Period, other than pursuant to an arrangement involving the Employment Business, without the Employment Business's prior written consent, which may be granted subject to any reasonable conditions the Employment Business wishes to impose.
- 2.6. Clause 2.5 will not apply where the Contractor and the Representative have not Opted-Out and the Conduct Regulations apply to the Assignment.
- 2.7. The Contractor will comply with the AWR as clarified from time to time by case law. The Employment Business will request from the Client information about the working, health and safety and employment conditions that are applicable to, the Client's employees and workers, and where relevant, are applicable to workers and/or employees who undertake the same or broadly similar work as that of the Representative during the Assignment. Upon receipt from the Client of such information, the Employment Business will provide this information to the Contractor.
- 2.8. The Contractor will promptly provide the Employment Business with all information, including Key Information Document (as defined in Clause 13A Conduct Regulations), that the Employment Business requires in order to comply with Clause 13A of the Conduct Regulations and will provide updated information as applicable, including revised Key Information Documents relevant to a Representative during an Assignment.

## 3. The Contract

- 3.1. This Agreement constitutes the entire agreement between the Employment Business and the Contractor, and it supersedes all previous agreements between the parties in relation to the subject matter hereof and governs all Assignments undertaken by the Contractor. The Contractor warrants that, in agreeing to enter into this Agreement, it has not relied on any statement or representations made by the Employment Business or by the Client.
- 3.2. No variation or alteration to this Agreement will be valid unless the details of such variation are agreed between the Employment Business and the Contractor and set out in writing and signed by both parties.
- 3.3. The Contractor agrees it has accepted the terms of this Agreement and any issued Assignment Schedule where the Representative commences the Assignment with the Employment Business in relation to performing the Services for the Client.

- 3.4. Without prejudice to any rights accrued prior to termination, the obligations within clauses 1, 2.5, 9, 10, 11, 14, 15 and 16 will remain in force beyond the cessation or other termination (howsoever arising) of this Agreement.

## 4. Undertakings of Contractor

- 4.1. The Contractor warrants to the Employment Business that by entering into and performing its obligations under this Agreement it will not thereby be in breach of any obligation that it owes to any third party. The Contractor further warrants to the Employment Business that the Representative, by performing the Services on behalf of the Contractor, will not thereby be in breach of any obligation that it owes to any third party.
- 4.2. The Contractor will notify the Employment Business if it knows or has reason to believe that the Representative(s) does not have the necessary right to work, skills, experience, training, qualifications, security clearances, criminal record checks and any other authorisation which the Client considers are necessary, or which are required by law or by any professional body to provide the Services for the period of the Assignment or for any other reason the Representative is not suitable to provide the Services.
- 4.3. The Contractor warrants and represents that all statements, whether oral or written, made by it and by the Representative and documentation the Contractor/Representative provides, in relation to this Agreement and the performance of the Services hereunder, are true and accurate and will be kept up to date and shall procure a warranty from the Representative on this basis in their contract of employment..
- 4.4. The Contractor warrants and shall procure a warranty from the Representative in their contract of employment that the Services will be performed with a high degree of professional skill and care.
- 4.5. The Contractor will procure that the Representative works such hours as are necessary to perform the Services and that the Representative will not unreasonably fail to provide the Services during hours required by the Client for the convenience of the Client and for the proper performance of the Services. Where minimum hours are specified in the Assignment Schedule, the Contractor warrants that it will ensure that the Representative will work for such minimum hours.
- 4.6. The Contractor warrants that the Representative shall follow all applicable rules and procedures of the Client relevant to independent contractors and the delivery of the Services and will act in a professional manner at all times when at the premises at which the Services are to be performed.
- 4.7. The Contractor warrants that it and the Representative shall, in relation to the Services, adhere to all applicable laws, statutes and regulations as enacted from time to time.
- 4.8. The Contractor warrants that pre-employment checks have been carried out in relation to each the Representative and that each the Representative has valid and subsisting leave to live, work and to remain lawfully in the UK for the duration of the Assignment.
- 4.9. The Representative will provide the Services under the supervision, direction or control of the Client and/or the Client will have the right thereof, unless specified otherwise in the Assignment Schedule.
- 4.10. The Contractor warrants that –
  - 4.10.1. it is not a Managed Service Company as defined in the Income Tax (Earnings and Pensions) Act 2003 (as amended);
  - 4.10.2. it is a company registered within the United Kingdom; and
  - 4.10.3. the Representative is engaged by the Contractor on a contract of employment;
  - 4.10.4. All payments made to the Representative, including remuneration for the Services, will be treated as United Kingdom derived employment income in their entirety.
  - 4.10.5. the Contractor is responsible for and pays the correct PAYE tax, NICs and other statutory deductions in accordance with relevant legislation in respect of any Representative's remuneration; and
  - 4.10.6. Any expenses paid in respect of the Services to the Representative are in strict compliance with relevant tax law and HMRC guidance, and have been verified by the Contractor as accurate and genuinely incurred.
- 4.11. The Contractor warrants that it will ensure the relevant provisions of this Agreement are included within the contract between the Contractor and the Representative and will ensure that the Representative is fully aware of their obligations in connection with this Agreement.
- 4.12. The Contractor warrants that it will procure that, where the Representative is eligible in relation to the Assignment hereunder, the Representative is enrolled (or given the opportunity so to do) in a pension scheme in accordance with The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2014 and the Contractor hereby agrees that it will indemnify and keep indemnified the Employment Business from any demands made against them in connection with this clause 4.11.

- 4.13. The Contractor warrants that the Representative is employed by the Contractor and that the Contractor is a company registered within the United Kingdom. The Contractor will, on request, provide proof of compliance with this clause as may be required by the Employment Business from time to time.
- 4.14. The Contractor will, on request, provide proof of compliance with this clause 4 as may be required by the Employment Business from time to time.

## 5. Obligations of Contractor

- 5.1. The Contractor will and will procure the Representative will -
  - 5.1.1. not engage in any conduct detrimental to the interests of the Employment Business or the Client which includes any conduct that may bring the Employment Business or the Client into disrepute and which may result in the loss of custom or business;
  - 5.1.2. comply with any statutory or other reasonable rules or obligations including but not limited to those relating to health and safety, site security and IT usage and security during the Assignment to the extent that they are applicable while performing the Services and to take all reasonable steps to safeguard its own safety, the safety of the Representative and the safety of any other person who may be affected by its actions during the Assignment;
  - 5.1.3. furnish the Client and/or the Employment Business with any progress reports as may be requested from time to time;
  - 5.1.4. notify the Employment Business forthwith in writing if the Contractor should become insolvent, dissolved or subject to a winding up petition or the Representative becomes bankrupt;
  - 5.1.5. where required, provide and insure at its own cost any such necessary equipment as is reasonable for the performance of the Services and ensure that any computer equipment and associated software which it provides for the purpose of providing the Services contains up-to-date anti-virus protection; and
  - 5.1.6. 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 will belong to the Client or the Employment Business as appropriate.
- 5.2. The Contractor will procure that the Representative will when requested obtain the signature/electronic approval of an authorised representative of the Client on a timesheet in a format provided by the Employment Business and submit timesheets to the Employment Business, in accordance with the Employment Business's procedure, and no later than within 1 week of the period to which they relate or as otherwise directed in writing by the Employment Business.
- 5.3. The Contractor will procure a warranty from the Representative that time recorded on the timesheets is true and accurate.
- 5.4. If the Representative is unable or unwilling for any reason to undertake the Services during the course of an Assignment, whether due to ill health or otherwise, the Contractor/Representative should inform the Employment Business as soon as possible.
- 5.5. The Contractor acknowledges, and will procure that the Representative acknowledges, that failure to deliver and obtain the Client signature/electronic approval of timesheets and in accordance with the Employment Business's procedure regarding such may delay payment.
- 5.6. The Contractor will procure that the Representative will, at the end of the Assignment or on demand, at its own expense, return to the Employment Business or to the Client (as directed) all property of the Client including, but not limited to, all equipment, documents (including copies) and other such materials, security passes, electronic storage devices and keys.
- 5.7. Nothing in this Agreement should be construed to render any the Representative an employee or a worker of either the Employment Business or the Client. The Contractor will ensure that the Representative does not hold himself/herself out as an employee or a worker or an agent of either the Employment Business or of the Client.
- 5.8. The Contractor will procure that the Representative shall arrange any appointments, including without limitation those relating to medical conditions, outside of the hours required by the Client to deliver the Services; save where the Client agrees otherwise in writing.
- 5.9. Neither the Employment Business nor the Client will be required or obliged to bear the cost of any training that the Representative may require in order to perform the Services unless specified in the Assignment Schedule. The Contractor will deliver such training and guidance (including policies) to the Representative as is expected of a reasonably prudent employer.
- 5.10. The Contractor agrees to promptly, upon request, provide evidence relating to the construction and operations of the Contractor's company and group or associated companies and details of the Representative's status/engagement in order to assist the Employment Business to comply with its contractual and legal obligations.
- 5.11. The Contractor agrees, and will procure that the Representative agrees, to promptly provide to the Employment Business any information requested by the Employment Business that may be required to satisfy statutory legislation and reporting requirements relating thereto, including pdfs of payslips and pdf excerpts of RTI returns relevant to the Representative.

5.12. Save where agreed in writing in advance by the Employment Business, the Contractor will not sub-contract or assign to any third party any of the Services which it is has agreed to perform under an Assignment in accordance with this Agreement.

## 6. Invoicing

- 6.1. The Representative shall submit and confirm, electronically via an Online Timesheet system provided by the Employment Business the time spent by the Representative in providing the Services. A self-billed invoice will be provided by the Employment Business showing the amount due from the Employment Business to the Contractor in respect of the Services at the rate set out in the Assignment Schedule. Online timesheets must be received by the Employment Business no later than 5 days following the period to which it relates (or as otherwise directed by the Employment Business). The self-billed invoice will display the Representative's name, Contractor details, Contractor registration number and, where applicable, the VAT number and any VAT due on the invoice.
- 6.2. The Employment Business will not pay any fees to the Contractor on behalf of the Representative (a) unless an invoice has been properly raised from timesheets submitted by the Representative in accordance with clause 6.1 above and (b) unless and until the Client has authorised or signed the relevant time recording process and (c) the hours claimed are true and accurate.
- 6.3. Unless otherwise stated in the Assignment Schedule, the Contractors will not be entitled to claim any expenses from the Employment Business or the Client. Where applicable, the Contractor will invoice the Employment Business for business expenses agreed in writing by the Employment Business. The Contractor will, on request, provide receipts in relation to invoiced expenses and the Employment Business may withhold payment of expenses subject to receiving such receipts. VAT on expenses must be shown separately.
- 6.4. Without prejudice to the Employment Business's rights and remedies under this Agreement or in law, whenever a sum of money is recoverable from or payable by the Contractor -
  - 6.4.1. in relation to an overpayment;
  - 6.4.2. for any sum that the Contractor is liable to pay to the Employment Business in respect of any breach of this Agreement; or
  - 6.4.3. from any indemnity given in this Agreement,the Employment Business may deduct that sum from any sum then due or which at any later time becomes due to the Contractor under the Assignment Schedule to which the recovery relates, save in the event of a material breach of this Agreement by the Contractor or the Representative, in which case the money can be recovered from any payments due.
- 6.5. Clause 6.2(b) will not apply if the Contractor and the Representative have not Opted-Out and the Conduct Regulations apply to the Assignment.

## 7. Charges/Fees

- 7.1. Subject to clause 7.3 and to the receipt of the Contractor's invoice in accordance with clause 6, the Employment Business will pay the Contractor for the Services in accordance with the fees specified in the Assignment Schedule, plus any applicable VAT.
- 7.2. The Contractor will be wholly responsible for the correct payment of PAYE Income Tax and National Insurance Contributions and any other taxes and deductions payable in respect of the Representative and will indemnify the Employment Business and/or the Client from any demands made against them in connection with this clause.
- 7.3. Payments will be made to the Contractor within 30 days of receipt of a valid invoice or as otherwise specified in the Assignment Schedule.
- 7.4. If the Contractor or the Representative is unable or unwilling for any reason to provide the Services in the course of the Assignment, then no fee will be payable by the Employment Business to the Contractor during any period that the Services are not provided.
- 7.5. If the Employment Business has reason to believe that the Client may not pay the Employment Business its invoices (or parts of them) in relation to the Representative, the Contractor agrees, and will procure the Representative agrees, to provide the Employment Business and/or the Client (as is appropriate) with any reasonably requested information, explanations and/or written statements relating to the Assignment/Services and with any reasonable assistance necessary to help the Employment Business obtain such payment from the Client.
- 7.6. Where the Conduct Regulations apply to the Assignment, the Employment Business shall comply with Regulation 12 of Conduct Regulations in respect of work done by the Representative during the Assignment.

- 7.7. Where the AWR applies and following the Qualifying Period, the Employment Business will use reasonable endeavours to obtain agreement from the Client to increase and/or adjust, where applicable in accordance with the AWR, the fees paid by the Client to the Employment Business for the Services of the Representative. Upon such agreement and subject always to clause 7, any such adjustment to the Representatives fees will be set out and issued within a revised Assignment Schedule under this Agreement.
- 7.8. For the avoidance of doubt and subject to any agreement by the parties to the contrary, the Contractor will not be entitled to receive payment from the Employment Business or from the Client for time not spent on the Assignment whether in respect of holidays, illness or absence or for any other reason.

## 8. Term of the Agreement

- 8.1. Without prejudice to clause 3.4, this Agreement will commence on the Effective Date and will continue until terminated in accordance with any of the clauses 8.2, 8.3, 8.4, 8.5 or 8.6.
- 8.2. Either party may terminate this Agreement without cause by giving not less than 1 weeks' notice in writing provided that any Assignment will continue under this Agreement until such time as terminated under clause 8.3 or 8.4 or until the End of Assignment date stated in the relevant Assignment Schedule.
- 8.3. Either party may terminate an Assignment without cause by giving the notice in writing stated within the relevant Assignment Schedule. Where an Assignment Schedule does not provide the Contractor with a right to give notice to end the Assignment early, the Contractor may request the Employment Business to end the Assignment early, in which case the Employment Business may, at its sole discretion, use reasonable endeavours to agree early termination of the Assignment with the Client.
- 8.4. Notwithstanding clauses 8.2 and 8.3, the Employment Business may without liability end this Agreement and/or any specific Assignment and instruct the Contractor to procure that the Representative ceases work on the Assignment immediately or on short notice at any time, where -
  - 8.4.1. the Contractor or the Representative has committed any serious or persistent breach of any of its obligations or undertakings under this Agreement;
  - 8.4.2. the Client believes the Contractor and/or the Representative is incompetent or has been negligent in the performance of the Services;
  - 8.4.3. the Client reasonably believes that the Contractor and/or the Representative has not observed any condition of confidentiality applicable to the Contractor and/or to the Representative from time to time;
  - 8.4.4. for any reason the Representative proves unsatisfactory to the Client;
  - 8.4.5. the Employment Business receives any information regarding the unsuitability of the Contractor or the Representative to provide the Services in the course of the Assignment;
  - 8.4.6. the Contractor becomes insolvent, goes into administration, is dissolved, is subject to a winding up petition or the Contractor in the reasonable opinion of the Employment Business is suffering severe financial distress and may not be in a position to pay its liabilities, including the Representative remuneration, as they fall due;
  - 8.4.7. any member of the Contractor's staff or any Representative is guilty of any fraud, dishonesty or serious misconduct;
  - 8.4.8. performance of the Services in the course of the Assignment is prevented by the incapacity of the Representative;
  - 8.4.9. the Employment Business has reason to believe the Client may not be able to pay any or all of the Employment Business's invoices;
  - 8.4.10. the Representative informs the Employment Business that he/she no longer wishes to be supplied by the Contractor;
  - 8.4.11. the Client reasonably believes that the Contractor and/or the Representative has damaged or is damaging the reputation of the Client;
  - 8.4.12. whereupon an event of force majeure or any other incapacity of the Contractor/Representative affects the delivery of the Services; or
  - 8.4.13. the Employment Business has reason to believe the Client may not be able to pay any or all of the Employment Business's invoices.

For the avoidance of doubt, termination pursuant to this clause 8.4 will take precedence over termination pursuant to clause 8.2 and 8.3 and, for the avoidance of doubt, over any notice period set out in the applicable Assignment Schedule.

- 8.5. Notwithstanding clauses 8.2 and 8.3, the Contractor 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 this Agreement and/or the relevant Assignment/s will cease with immediate effect without liability to the Employment Business. For the avoidance of doubt and subject to clause 7.1, the Contractor's invoices will be paid for work that has been done by the Representative prior to termination of the Agreement or the Assignment/s under this clause.



- 8.6. Notwithstanding clauses 8.2 and 8.3, where the Employment Business receives notice from the Client to terminate the Assignment or not to proceed with the Assignment, the Employment Business may, with immediate effect and without liability, terminate this Agreement and/or the relevant Assignment/s without liability to the Contractor or to the Representative. For the avoidance of doubt, this includes termination on any date prior to the date on which the Representative is due to commence performing the Services under the Assignment.
- 8.7. The Contractor agrees that the Employment Business may notify the Contractor and/or the Representative verbally of termination of the Assignment where, in the reasonable opinion of the Employment Business, the situation merits such including (without limitation) where such termination is required to be with immediate effect.
- 8.8. The Contractor acknowledges and agrees that the Employment Business is not obliged to provide any reason or further explanation to the Contractor or to the Representative in connection with termination under clause 8, whether or not such a reason is provided by the Client to the Employment Business. Furthermore, in the event a reason is provided whether by the Client or by the Employment Business, the Employment Business is not liable to the Contractor or to the Representative in relation to the content of such reason.
- 8.9. Failure by the Contractor to give notice of termination as required in accordance with this Agreement will constitute a material breach of contract and the Contractor agrees to indemnify and keep indemnified the Employment Business from any and all losses in connection with its breach of this clause 8.9.

## 9. Intellectual Property

- 9.1. The Contractor warrants and will procure in respect of the Representative that the Contractor and the Representative hereby assign to the Client (or to the Employment Business for onward transfer to the Client where directed so to do by the Employment Business) all present and future copyright, title and interest of whatever nature (including but not limited to copyright and patent application rights), topography rights, design rights, trademarks, rights in databases, sui generis rights, trade secrets (whether registered or unregistered) and other confidential information, know-how and all other intellectual property rights of a similar nature in any part of the world and all other intellectual property rights in original work and all applications and rights to apply for the protection of any of the foregoing, produced, prepared or provided by the Representative, in whatever media, in relation to or arising from the performance of the Assignment prepared for the Client or produced by any the Representative in connection with an Assignment under this Agreement, and that the aforementioned rights will vest in and remain the property of the Client throughout the world free from any interest of the Contractor, the Representative or any third party or parties.
- 9.2. The Contractor will do anything and will procure that the Representative will do anything that the Client may reasonably require in order effectively to vest such rights in the Client (or to the Employment Business for onward transfer to the Client where directed so to do by the Employment Business) or such third party as the Client specifies or to evidence the same (whether before or after the termination of this Agreement).
- 9.3. The Contractor acknowledges and agrees, and will procure that the Representative acknowledges and agrees, that the Client retains ownership of all intellectual property rights of whatever nature and, if registrable, whether registered or not, in the documents or other material and data and other information provided to or provided by the Representative in relation to an Assignment. For the avoidance of doubt, the Client will not be deemed to have granted the Contractor or the Representative any licence to use the documents or other material and data or other information other than solely for the purposes of the relevant Assignment.
- 9.4. The Contractor will, and will procure that the Representative will, promptly disclose to the Client and to the Employment Business any idea, method, invention, discover, design, concept or other work made or created by the Representative in relation to the Services provided during the Assignment.
- 9.5. The Contractor warrants that the Services provided are not in breach of the intellectual property rights of any third party.
- 9.6. The Contractor will indemnify and keep indemnified the Client and the Employment Business from (without limitation) any and all actions, claims, proceedings, settlements, reasonable legal fees, costs, reasonable expenses, damages, demands, losses and liabilities whatsoever and however incurred resulting or arising out of any claim by any third party that the use or possession of work performed or delivered by the Contractor or by the Representative in connection with this Agreement infringes the intellectual property rights of that third party.
- 9.7. The Contractor hereby, and will procure that the Representative does, irrevocably and unconditionally waive in favour of the Client any and all moral rights conferred on it and/or the Representative by statute for any intellectual property, design or copyright work in which rights are (or should be) vested in the Client pursuant to this clause 9. The Contractor hereby warrants that it has obtained the same undertaking from the Representative.

## 10. Confidentiality

- 10.1. Without prejudice to every other duty not to disclose any and all information given to the Contractor or to the Representative or gained in confidence in connection with this Agreement (including, without limitation, information provided by or pertaining to the Employment Business) the Contractor will not and will procure that the Representative will not at any time, whether during or after the Assignment, disclose to any person or make use of any of the trade secrets, confidential or sensitive (including commercially sensitive) information of the Client, of the Client's customers and of the Employment Business; save where required by law. For the purposes of this clause, confidential or sensitive information includes information relating to their business methods, plans, systems, finances or projects, training and development and research or development projects, their trade secrets, the identity and business affairs of their customers and clients, potential customers and clients, the provision of products or services to which they attach confidentiality or in respect of which they hold an obligation to a third party which comes to either parties' attention or possession, including information that the Contractor or the Representative creates, develops, receives or obtains in connection with an Assignment and which is regarded or could reasonably be regarded as confidential, whether or not any such tangible information is marked 'confidential'.
- 10.2. The Contractor will, and will procure that the Representative will, both during and after the Assignment, keep confidential from any third party and from the Client the rates paid to the Contractor by the Employment Business.
- 10.3. The Contractor agrees that if the Employment Business and/or the Client suffer disclosure of their confidential information through breach of clause 10.1, the Employment Business or the Client (as the case may be) will be entitled, in addition to any and all other remedies, to temporary and injunctive relief.

## 11. Data Protection

- 11.1. The parties hereto
  - 11.1.1. acknowledge this clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation;
  - 11.1.2. acknowledge that for the purposes of the Data Protection Legislation, the Employment Business is a Data Controller and the Contractor is a Data Controller but they are not Joint Controllers (as defined in the Data Protection Legislation) unless a specific agreement is made to that effect between the parties;
  - 11.1.3. agree that the Representative is not the Client's Data Processor (as defined within Data Protection Legislation) save where agreed otherwise within an Assignment Schedule and subject to additional terms and conditions;
  - 11.1.4. warrant to each other that any Personal Data relating to a Data Subject, whether provided by the Client, by the Employment Business, by the Contractor or by the Representative, will be used, Processed and recorded by the receiving party in accordance with Data Protection Legislation and for the purposes of fulfilling this Agreement;
  - 11.1.5. will ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
  - 11.1.6. will take appropriate technical and organisational measures to adequately protect all Personal Data against accidental loss, destruction or damage, alteration or disclosure;
  - 11.1.7. will provide reasonable assistance to the other in responding to any request from a Data Subject with respect to data subject access requests and other data subject rights, data security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 11.1.8. will promptly notify the other on becoming aware of a suspected or actual Personal Data breach relevant to Personal Data transferred pursuant to this Agreement; and
  - 11.1.9. will maintain complete and accurate records and information to demonstrate their compliance with this clause 11.1.
- 11.2. The Contractor understands, and will procure that the Representative understands that in providing the Services, Personal Data relating to the Representative will be collected by the Employment Business and passed to the Client in the course of the administration of the agreement between the Employment Business and the Client. The Contractor will procure the Representative understands that in providing the Services, the Client and/or the Employment Business, or anyone processing data on behalf of the Client and/or the Employment Business, may transfer Personal Data relating to the Representative outside the European Economic Area.
- 11.3. The Contractor will, and will procure that the Representative will, when requested so to do by the Employment Business, make available to the Employment Business all information necessary to demonstrate compliance with the obligations associated with Data Protection Legislation and clause 11 and will allow for audits and inspections (upon reasonable notice) in order to demonstrate compliance.



- 11.4. Notwithstanding clauses 11.1.7 and 11.1.8, in the event of a suspected or actual Personal Data Breach, the Contractor will promptly (at its own expense) provide such information, assistance and cooperation and do such things as the Employment Business may request to -
- 11.4.1. investigate and defend any claim or regulatory investigation;
  - 11.4.2. mitigate, remedy and/or rectify such breach; and
  - 11.4.3. prevent future breaches.
- 11.5. The Contractor will not, and will procure that the Representative will not, release or publish any filing, communication, notice, press release or report concerning any Personal Data Breach without the prior written approval of the Employment Business.
- 11.6. The Contractor understands, and will procure that the Representative understands, that in providing the Services Personal Data may be Processed in order to comply with the Employment Business's and the Client's or associated employment intermediaries' legal obligations, including reporting the Assignment details to HMRC. The Contractor warrants that the Representative is aware of such Processing (including any such transfer) on the understanding that any Personal Data is processed fairly and lawfully in accordance with the Data Protection Legislation. The Contractor acknowledges, and will procure the Representative acknowledges, that information provided in relation to clauses 5.10 and 5.11 may be disclosed by the Employment Business to a third party specifically for the purposes of complying with statutory legislation.

## **12. Relationship between the Employment Business, the Contractor, the Representative and the Client**

- 12.1. This Agreement, or any Assignment hereunder, is not intended by the Parties to constitute or give rise to a contract of service or an employment contract.
- 12.2. The Employment Business will not charge the Representative for work-finding services.
- 12.3. Upon the termination or expiry of this Agreement and/or any Assignment hereunder, howsoever arising, the Employment Business will not be obliged to offer, and the Contractor and the Representative will not be obliged to accept, any further assignments, contracts, engagements, projects or request for services of any type whatsoever.
- 12.4. The Contractor and the Representative have no authority to act or contract on behalf of the Employment Business or the Client and will not, and will procure that the Representative will not, hold itself/himself/herself out as capable of doing so. The Contractor will not, and will procure that the Representative will not, purport to bind the Employment Business or the Client in any way.
- 12.5. The Contractor 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 Representative (including, without limitation, the correct payment of taxation and National Insurance Contributions) will fall upon and be discharged wholly and exclusively by the Contractor. If any person should seek to establish any liability or obligation upon the Employment Business or upon the Client on the grounds that the Representative is an employee or worker (or should be treated as such for the purpose of employment rights, benefits and/or taxation) of the Employment Business or of the Client, the Contractor agrees to indemnify and keep indemnified the Employment Business in respect of any such liability, obligation, or third party claim (including a claim brought by the Client) and any related (without limitation) costs, expenses, legal expenses, proceedings, settlements or other losses which the Employment Business or the Client incur.
- 12.6. Neither the Contractor nor the Representative will be entitled to receive from the Employment Business or from the Client, sickness pay, holiday pay, long service leave or any other similar entitlement.
- 12.7. In the event of the breach of clause 12.4 above, any contract or agreement purportedly entered into by the Contractor or the Representative as an agent for either the Employment Business or the Client will be deemed to have been made as if the Contractor or the Representative, as the case may be, acted and contracted as principal.

## **13. Notices**

- 13.1. Save as stated within clause 8.7, any notice required to be given under this Agreement shall be delivered by hand, sent by facsimile, e-mail or prepaid first class post to the recipient at its fax number or address specified in this Agreement.
- 13.2. Notices will be deemed to have been given and served,
- 13.2.1. if delivered by hand, at the time of delivery if delivered before 5.00pm on a business day or in any other case at 10.00am on the next business day after the day of delivery; or
  - 13.2.2. if sent by facsimile or e-mail, at the time of despatch if despatched on a business day before 5.00 p.m. or in any other case at 10.00 a.m. on the next business day after the day of despatch, unless the transmission report indicates a faulty or incomplete transmission or, within the relevant business day, the recipient informs the sender that the facsimile or e-mail message was received in an incomplete or illegible form;

13.3. The Contractor agrees that notices may be sent by or provided to the Representative for or on behalf of the Contractor in relation the relevant Assignment under this Agreement.

## 14. Liability

- 14.1. The Contractor agrees to indemnify and keep indemnified the Employment Business and the Client in full from and against any and all, actions, claims, demands, proceedings, judgements, damages, losses (including indirect or consequential), liabilities, costs, charges and reasonable expenses (including legal fees on the standard basis), settlements, fines, interest and penalties of whatever nature and in whatever jurisdiction, which may be instituted, made or alleged against, or suffered or incurred by the Employment Business or by the Client, arising from or in connection with –
- 14.1.1. any breach of the Contractor's or the Representative's obligations under this Agreement;
  - 14.1.2. any deliberate or negligent act or omission of the Contractor and/or of the Representative;
  - 14.1.3. any assignee or sub-contractor to whom the Contractor assigns or sub-contracts the performance of the Services (where permitted by the Employment Business in writing);
  - 14.1.4. the loss or destruction of or damage to any property of the Client which is caused by the Contractor/Representative;
  - 14.1.5. death of or personal injury to any person caused by the Contractor/Representative in connection with any Assignment (except, for the avoidance of any doubt, to the extent that this is caused by negligence of the Employment Business or the Client);
  - 14.1.6. any claim or allegation by the Representative regarding the termination or expiry of any Assignment of the Representative;
  - 14.1.7. any claim or allegation that the Representative is an employee of the Employment Business or of the Client;
  - 14.1.8. any claim or demand, howsoever arising, against the Employment Business or the Client in respect of any income tax and/or employee's and/or employer's National insurance contributions and/or tax treatment of expenses and benefits and/or any other taxation relating to any Representative; or
  - 14.1.9. any claim against the Employment Business or the Client arising out of any act or omission of any Representative including (without limitation) any act of discrimination.
- 14.2. Where the Contractor or the Representative is in breach of this Agreement which results in the Client terminating the agreement between the Employment Business and the Client or terminating the Assignment, the Contractor agrees, without prejudice to any other remedy of the Employment Business, to indemnify the Employment Business for any loss of the Employment Business's margin or fee for employment business services as applicable that would have been charged to the Client relating to the remaining period of the Assignment.
- 14.3. The Contractor shall ensure and maintain the provision of adequate Employers Liability insurance, Public Liability insurance, Professional Indemnity insurance and any other suitable policies of insurance in respect of the Contractor, of the Representative and the Representative's acts, errors or omissions in the provision of the Services and any and all indemnities relating thereto within this Agreement. Upon request, the Contractor will make a copy of the policy available to the Employment Business. In addition to this clause 14.3, the Employment Business may specify in the Assignment Schedule the level of insurance cover and any additional insurance that the Contractor (or the Representative) is required to maintain.
- 14.4. Without prejudice to any other rights and/or remedies the Employment Business has within this Agreement or at law, the Contractor is liable for any defects or deficiencies arising in relation to the Services performed by the Representative in the course of the Assignment and will, where requested, rectify at its own cost and in its own time such defects or deficiencies as may be capable of remedy within the period required by the Client or, where no such specific period is required in the event then within a reasonable period of time from such request.
- 14.5. Excluding third party claims brought against the the Employment Business and, except where stated otherwise within this Agreement or save as required by law, neither party will be liable to the other in connection with this Agreement for –
- 14.5.1. loss of profits, loss of business, loss of revenue, depletion of goodwill, pure economic loss, loss of anticipated savings, damages, charges, expenses and/or similar losses; or
  - 14.5.2. any special, indirect or consequential losses.
- 14.6. Save as required by law, the Employment Business will not be liable to the Contractor or the Representative for any loss, expense, damage or delay howsoever arising (whether directly or indirectly) in connection with this Agreement, save where expressly stated otherwise within this Agreement.

## 15. Contract Renewal

- 15.1. An Assignment may be extended by mutual agreement by the Parties signing a further Assignment Schedule.

- 15.2. Notwithstanding clause 15.1 above, if the Representative supplied under this Agreement continue to perform the Services or any other services for the Client at the express request of the Employment Business beyond the End of Assignment date set out within the applicable Assignment Schedule, then the Assignment (and for the avoidance of doubt, this Agreement) will be deemed to be extended for an additional period until such time as such further Assignment Schedule is signed or further agreement is entered into between the Parties ("the Deemed Period").
- 15.3. The terms and conditions contained herein will be deemed to apply in respect of any Services or other services provided by the Representative during the Deemed Period, except as stated in clause 15.4 below.
- 15.4. In addition to the rights of the Parties in connection with clause 15.3 above, the Employment Business may terminate the Deemed Period with immediate effect, and any notice period detailed in the relevant Assignment Schedule will not apply.

## 16. General

- 16.1. Any failure by the Employment Business to enforce at any particular time any one or more of its rights under this Agreement will not be deemed a waiver of such rights or of the right to enforce this Agreement subsequently.
- 16.2. If any provision, clause or part-clause of this Agreement is held to be invalid, void, illegal or otherwise unenforceable by any judicial body, the remaining provisions of this Agreement will remain in full force and effect to the extent permitted by law.
- 16.3. Save as provided in this clause 16.3, no provision of this Agreement will be enforceable by any person who is not a party to it pursuant to the Contract (Rights of Third Parties) Act 1999 ("the Act"). This does not, however, affect any right or remedy of a third party that exists or is available independently of the Act. The Client named on the Assignment Schedule will have the benefit of the provisions and the indemnities within this Agreement where stated within the clauses in this Agreement. Notwithstanding that any term of this Agreement may be or become enforceable by a person who is not a party to it, the terms of this Agreement may be varied, amended or modified without the consent of any such third party.
- 16.4. For the purposes of this Agreement, the Employment Business is acting as an employment business as defined within the Conduct Regulations; save where a permanent placement results, in which case the Employment Business will be acting as an employment agency as defined within the Conduct Regulations.
- 16.5. If there is a conflict between these terms and conditions and the Assignment Schedule, these terms and conditions will take precedence save where expressly provided for within these terms and conditions or where additional terms/conditions or variations are expressly stated within the Assignment Schedule or as otherwise agreed in writing by the Employment Business.
- 16.6. The parties agree that the manner in which the Representative provides the Services and whether s/he is subject to the supervision, direction or control of any party, including the Client, or to the right thereof, will be a matter of fact on an individual Assignment basis, save that it is recognised that pursuant to S339A and 668B of ITEPA 2003 under the Finance Act 2016 it is assumed that the Representative is subject to the supervision, direction or control of the Client save where shown otherwise to the satisfaction of the Contractor, acting in full compliance with its statutory obligations.
- 16.7. The Contractor shall comply with all applicable laws, statutes, regulations, codes and guidance relating to anti-bribery and anti-corruption (Anti Bribery Laws) which includes (without limitation) compliance with the Bribery Act 2010. The Contractor will not, and will procure that the Representative will not, offer, give or agree to give to any employee or representative of the Employment Business or of the Client or of any third party any gift, personal financial incentive or other consideration that could act or reasonably be perceived to act as an inducement or a reward for any act or failure to act connected to the performance of this Agreement and the arrangement of the Assignment.
- 16.8. The Contractor shall comply with all applicable anti-slavery and human trafficking laws and regulations including (without limitation) the Modern Slavery Act 2015.

## 17. Governing Law and Jurisdiction

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

blueberrycreatives.co.uk  
020 7199 3850  
Uniting Creative Minds  
Company No. 04379194  
VAT No. 795713290



**NETFLIX**

### Contact Details for Notices:

Contractor	Employment Business
Address: [Office Address for Notices]	Address: 10 Redan House, 27 Redan Place, London, W2 4SA
Contractor email: [Email Address for Notices]	Email: <a href="mailto:makeda@blueberrycreatives.co.uk">makeda@blueberrycreatives.co.uk</a>

## Assignment Schedule

Client Information	
Client Company Name	
Client Company Registered Address	
Client Company Registration Number	
Location/s where the Services are to be delivered	<b>TBC by Contractor and Client</b>
Client hiring/line manager	
Contact Number for Client hiring/line manager	
Invoicing Address	
Contractor Services Information	
Name of Contractor	Name of the Contractor Company
Representative of Contractor	Name of the Individual performing the Services
Representative's PAYE Number	If provided
Description of the Services	The Services to be undertaken
Status of AWR Qualifying Period at the Start of Assignment	(0) Calendar Weeks
Assignment Status	New / Extension (delete as appropriate)
Production Name	
Start of Assignment	
End of Assignment	
Pencils / General Notes	
Specific hours/days/timekeeping requirements	
Kit Requirements	Kit Required: Kit to be provided by: (Client / Talent)
Notice period for the Contractor to terminate the Assignment	1 weeks notice subject always to clauses 8.3, 8.4 and 8.5
Notice period for the Employment Business to terminate the Assignment	1 weeks notice subject always to clauses 8.3, 8.4 and 8.5 that in the event shall take precedence over clause 8.2
Contractor Opted-Out	Opted Out (or) Not Opted Out
Specific Insurance Requirement	As required to cover the warranties and obligations within this Agreement.
Charges Information	
Contractor Fee – standard hours	Basic Pay Rate: Daily rate of (Daily Rate)
Contractor Fee – overtime and non-standard hours	Basic Overtime Rate: (Overtime rate) per hour Weekends and Bank Holidays will be charged at time and a half
Additional fees / Agreed expenses	Additional agreed expenses, kit hire charges, or additional fees paid where agreed in writing (including email) by the client's employee.
AWR Adjustment	Following completion of the Qualifying Period, the following adjustments will apply: Detail (or) No Confirmed Adjustment. Applicable from the following date:
Payment terms	30 days from the date stated on the self-billed invoice
General Information	
Terms and Conditions applicable	Agreement For The Engagement And Provision Of Services
Additional Terms/Conditions Applicable	None
Agreed variations to Terms and Conditions	No variations agreed If there is a conflict between the Terms and Conditions stated above and the Assignment Schedule, the Assignment Schedule will take precedence.

