

## TERMS OF BUSINESS

for the supply of Consultancy Services by a Managed Professional Services Company that has opted out of the Business Regulations 2003

*This contract is for use when supplying limited company contractors who: (a) are not under the supervision, direction or control of the Client (i.e. the arrangement does meet the IR35 tests of self-employment so is known as being "outside IR35"); (b) work through a limited company incorporated in the UK, EU or Isle of Man; and (c) have opted out of the Conduct Regulations. The Agency Workers Regulations will not apply in relation to this contract.*

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## 1. THE CONTRACT

- 1.1 [Client] whose registered address is [Client address] ("Client") have met with [Service Provider name] ("Service Provider") and have agreed to enter into this agreement with Ekim Consulting Limited whose registered address is 40 St James Buildings, St James Street, Taunton, Somerset, England, TA1 1JR ("Ekim Consulting") so that it can provide the Managed Professional Service services.
- 1.2 The Client has agreed with Ekim Consulting that the Service Provider shall provide [describe the services, reflect fully in schedule 1] (the "Engagement").
- 1.3 This agreement shall commence on [start date] and shall finish on [end date], or until completion of the Services to the reasonable satisfaction of the Client at which time this agreement shall expire automatically. Either party may terminate this agreement by providing not less than 30 days notice to the other party.
- 1.4 The Client acknowledges that the Service Provider and the associated Staff carrying out the Engagement have opted out of the Conduct Regulations and further that any person to whom the performance of the consultancy Services has been assigned or sub-contracted has opted out of the Conduct Regulations and that none of the Conduct Regulations apply to any Engagements governed by this Agreement.
- 1.5 The Client acknowledges that the Service Provider may supply any of the Staff to perform the consultancy Services and where the Service Provider is unable to provide any part of the Services for whatever reason the Service Provider shall be entitled to assign or sub-contract the performance of the Services provided that Ekim Consulting and the Client are reasonably satisfied that the assignee or sub-contractor has the required skills, qualifications, resources and personnel to provide the Services to the required standard and that the terms of any such Engagement or sub-contract contain the same acknowledgements under and obligations imposed by the agreement between the Service Provider and Ekim Consulting. The Client shall not unreasonably withhold or delay any approval sought for the Engagement or sub-contracting of the Services.
- 1.6 The Client acknowledges that the Service Provider shall be permitted to determine how it will provide the Services and will have the flexibility to determine the number of hours required and the times worked, to complete the Services, subject to the Service Provider complying with any reasonable operational requirements of the Client. The Service Provider will be at liberty to determine the location at which it will provide the Services, but where the Services are undertaken at the Client's site, the Service Provider will comply with any reasonable requirements relating to working hours, and any other operational requirements in relation to the Client's site.
- 1.7 No party seeks to create or imply any mutuality of obligation between the parties in the course of the performance of this contract for services or during any notice period. Neither the Client nor Ekim Consulting is obliged to pay the Service Provider at any time that there is no work available during the course of this agreement.

- 1.8 Neither Ekim Consulting nor the Client is obliged to offer any work to the Service Provider, nor is the Service Provider obliged to accept any work if it is offered. The Service Provider is not obliged to make its services available. Specifically, both parties declare that they do not wish to create or imply any mutuality of obligations whatsoever, either during the course of this Contract for Services or any period where work is not available.
- 1.9 Neither the Client nor any of its officers, employees or agents shall have any right of control over the Service Provider and/or its Staff. The Service Provider shall decide the method of performance of the Services but in doing so agrees to co-operate with the Client to ensure smooth delivery of the Services.
- 1.10 The Client warrants that it does not (and does not have the right to) supervise, direct or control the Service Provider or the associated Staff. The Client will notify Ekim Consulting in writing if it exercises supervision, direction or control, or seeks the right to supervise, direct or control the Service Provider or the associated Staff in which case Ekim Consulting may terminate the Agreement and/ or any Engagements under the Agreement in accordance with clause 1.3. In addition, the Client agrees that Ekim Consulting does not (and does not have the right) to supervise, direct or control the Service Provider. Furthermore no member of the Service Provider is an agency worker as defined under the AWR.
- 1.11 Nothing in this agreement shall render any member of the Service Provider's Staff (including specifically, but without limitation, HMRC and any successor, equivalent or related body pursuant to any of the provisions of ITEPA (and/or any supporting or consequential secondary legislation relating thereto) or the NICs Legislation arising out of any Engagement or arising out of any non-compliance with and/or as a result of any breach of this Agreement by the Client.

## **2. FEES AND EXPENSES**

- 2.1 The Client agrees to pay Ekim Consulting the fee of £ [x] plus VAT ("the Fee") for each day of the Engagement together with any expenses which the Client has approved and which have subsequently been incurred by the Service Provider in the performance of the Engagement ("Expenses"). The Fee and Expenses will be invoiced to the Client on monthly basis and are payable within 10 days. The Client shall pay the Fee and Expenses in full without any deduction, set-off or counterclaim and if this agreement is terminated for whatever reason then this will not affect the Client's obligation to pay for any services or work already performed.
- 2.2 Ekim Consulting reserves the right to charge interest on any overdue amounts at the rate of 2% per annum above the base rate from time to time of HSBC Bank from the due date until the date of payment.

### **3. EXECUTION OF SERVICES**

At the end of each month of the Engagement or at the end of the Engagement the Client shall verify the execution of the services provided by the Service Provider by signature of a form provided to the Service Provider for this purpose. The signing of this form constitutes acceptance that the Service Provider's services have been provided satisfactorily however a failure to verify execution of the services in writing does not affect the Client's obligation to pay Ekim Consulting for the work done.

### **4. RE-ENGAGEMENT FEES**

The Engagement by a Client of an Service Provider and/or the Consultant introduced by Ekim Consulting, or the Introduction by the Client of the Service Provider and/or the Consultant to any third party resulting in an Engagement renders the Client subject to the payment of an introduction fee calculated as 25% of the annual Fee provided that the Engagement takes place within a period of six months from the termination of the Engagement under which the Service Provider was supplied, or if there was no Engagement, within six months of the Introduction of the Service Provider and/or the Consultant by Ekim Consulting Resourcing to the Client. Where the Client fails to inform Ekim Consulting of the fee or annual remuneration payable to the Service Provider, the introduction fee will be calculated by multiplying the monthly charge of Ekim Consulting for the Service Provider's services by six months. No refund of the introduction fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due.

### **5. LIABILITY**

- 5.1 The Client accepts that the Service Provider is in business on its own account and therefore may be engaged to provide services to other clients during the Engagement. However Ekim Consulting shall use its reasonable endeavours to ensure that:
  - 5.1.1 the Service Provider satisfactorily performs the services during the Engagement and completes the Engagement to the satisfaction of the Client; and
  - 5.1.2 the Service Provider does not accept instructions from third parties, which could result in the Service Provider being engaged by competitors of the Client where this has the potential to harm the commercial interests of the Client.
- 5.2 The Client confirms that it will comply in all respects with all relevant statutes, bylaws and legal requirements including provision of adequate Public Liability insurance in respect of the Service Provider. The Client shall be responsible for ensuring the health and safety of any of the staff supplied by the Service Provider to work on the Client's premises and where the services are performed on the Client's premises the Client shall indemnify Ekim Consulting against any costs, claims, damages and expenses incurred by Ekim Consulting as a result of any breach of this agreement by the Client.

- 5.3 For the avoidance of doubt, neither the Service Provider nor its staff including the methods whereby it performs the services during the Engagement are under the supervision or control of Ekim Consulting and/or the Client.
- 5.4 Ekim Consulting excludes all liability to the fullest extent permitted by law, whether in contract, tort, common law or under statute, for any loss, expense, damage, costs or delay suffered or incurred by the Client and arising from:
  - 5.4.1 the failure of the Service Provider to complete the Engagement for any reason whatsoever;
  - 5.4.2 the Service Provider's performance, incomplete performance or nonperformance of the Engagement; and
  - 5.4.3 the Service Provider's negligence, dishonesty, misconduct or lack of care or skill or that of its officers, employees, representatives or agents.
- 5.5 Ekim Consulting excludes all liability to the fullest extent permitted by law, whether in contract, tort, common law or under statute for any:
  - 5.5.1 indirect, special and consequential loss or damage suffered or incurred by the Client;
  - 5.5.2 loss of business, capital, profit, savings, reputation, revenue, contract, use or goodwill; and
  - 5.5.3 any loss, damage, costs or expenses suffered by the Client as a result of any claim made against the Client by a third party.
- 5.6 If for any reason any exclusion of liability in clauses 5.4 and 5.5 is void or unenforceable, then and in any event the aggregate liability of Ekim Consulting for any and all claims made against it under this agreement shall be limited to the amount of the Fees payable hereunder.
- 5.7 Nothing in this clause 5 shall limit or exclude the liability of Ekim Consulting for death or personal injury resulting from its negligence, or fraud.

## **6. CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

- 6.1 Ekim Consulting will use its reasonable endeavours to ensure that the Service Provider enters into a confidentiality agreement with the Client.
- 6.2 Ekim Consulting agrees to take reasonable steps to protect the confidential information and trade secrets of the Client.
- 6.3 Ekim Consulting acknowledges that all copyright, trademarks, patents and other intellectual property rights deriving from the services provided by the Service Provider during the Engagement shall belong to the Client

## **7. TERMINATION OF THE ENGAGEMENT**

- 7.1 The Client may terminate the Engagement forthwith by written notice to Ekim Consulting where:
  - 7.1.1 the Service Provider has acted in breach of any statutory or other reasonable rules and regulations applicable to them while performing the services; or
  - 7.1.2 the Client reasonably believes that the Service Provider has not observed any condition of confidentiality applicable to the Service Provider from time to time; or
  - 7.1.3 the Client reasonably considers the performance of the services by the Service Provider to be unsatisfactory.
- 7.2 If the Service Provider or Ekim Consulting becomes bankrupt or has a receiving order or administrative order made against it or is put into liquidation (save for the purposes of solvent reconstruction or amalgamation).
- 7.3 Ekim Consulting may terminate an Engagement forthwith by notice in writing:
  - 7.3.1 if the Client is in willful or persistent breach of its obligations under this agreement; or
  - 7.3.2 if the Client becomes bankrupt or has a receiving order or administrative order made against it or is put into liquidation (save for the purposes of solvent reconstruction or amalgamation).

## **8. GENERAL**

- 8.1 For the purposes of this agreement:
  - 8.1.1 "Engagement" means the employment or use of the Service Provider's services or the services of any officer, employee, or representative of the Service Provider.
  - 8.1.2 "Introduction" means the interview by the Client of an officer, employee or representative (including, without limitation, the Consultant) of the Service Provider in person, writing or by telephone or the passing of information to the Service Provider which allows the Client to identify the Service Provider and which leads to the Engagement of the Service Provider, or any officer, employee, or representative of the Service Provider by the Client.
- 8.2 All notices shall be in writing and shall be sent to the registered office of the party upon whom the notice is to be served. Any such notice may be delivered personally or by first class prepaid post or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours and if by facsimile transmission when dispatched.
- 8.3 This agreement constitutes the entire agreement between the Client and Ekim Consulting and no variation or alternation shall be valid unless agreed in writing and signed by both parties.



8.4 This agreement shall be governed by the law of England & Wales and are subject to the exclusive jurisdiction of the courts of England & Wales.

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Signed on behalf of Ekim Consulting  
Dated.....

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Signed on behalf of the Client  
Dated.....