# Terms of business for the supply of temporary workers



## THE PARTIES

(1) Outcome Service for Public Sector Limited (registered company no. 12747576) of 2 Tower House, Hoddesdon, Greater London, EN11 8UR (**“the Employment Business”**).

(2) *Client’s name* Limited [*registered company no.*] of [*address*] (**“the Client”**) to whom the PSC is Introduced. For the avoidance of doubt the Client shall also include any member of the Client's Group or any associated person, firm or corporate body (as the case may be) to whom the PSC is Introduced (**“the Client”**).

## RECITALS

(1) The Employment Business carries on the business of sourcing and supplying independent contractors to provide services to its clients. The Client has instructed the Employment Business to supply such contractors to provide certain services, as specified in the relevant Assignment Details Form (**“the PSC Services”**). For the purposes of this contract all those independent contractors are supplied through Personal Service Companies ("PSCs").

(2) The Employment Business will introduce a PSC to the Client to provide the PSC Services to the Client subject to the terms of this Agreement.

**IT IS AGREED** as follows:

## 1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement the following definitions apply:

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| **"Assignment"** | means the period of time during which a PSC is supplied by the Employment Business to the Client; |
| **"Assignment Details Form"** | means the information set out in Schedule 1; |
| **"AWR"** | means the Agency Workers Regulations 2010; |
| **"Charges"** | means the charges as notified to the Client before an Assignment starts and which may be varied by the Employment Business from time to time during the Assignment. The method of calculating the Charges is set out in Schedule 1 (Assignment Details); |
| **"Client's Group"** | means (a) any individual, company, partnership, statutory body or other entity which from time to time Controls the Client, including (but not limited to) as a holding company as defined in section 1159 of the Companies Act 2006; and (b) any company, partnership, statutory body or other entity which from time to time is Controlled by or is under common Control with the Client, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006; |
| **"Conditions of Liability"** | means meets the requirements of section 50(1)(b) ITEPA and one of the conditions of liability set out in Sections 51 to 53 and 61N, 61O and 61P ITEPA; |
| **"Conduct Regulations"** | means the Conduct of Employment Agencies and Employment Businesses Regulations 2003; |
| **"Control"** | means (a) the legal or beneficial ownership, directly or indirectly, of more than 50% of the issued share capital or similar right of ownership; or (b) the power to direct or cause the direction of the affairs and/or general management of the company, partnership, statutory body or other entity in question, whether through the ownership of voting capital, by contract or otherwise, and "Controls" and "Controlled" shall be construed accordingly; |

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| **"Data Protection Laws"** | means the Data Protection Act 2018, the General Data Protection Regulation (EU 2016/679) and any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data; |
| **"Engagement"** | means the engagement (including a PSC's acceptance of the Client's offer), the employment or use of a PSC, by the Client or by any third party to whom the PSC has been introduced by the Client, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, an agency, licence, franchise or partnership arrangement, or any other engagement; and "Engage", "Engages" and "Engaged" shall be construed accordingly; |
| **"Exempt Organisation"** | means an organisation which is exempt from Part 2, Chapter 10 ITEPA; |
| **"Inside IR35"** | means an Assignment which the Client has determined meets the provisions of Section 61M ITEPA; |
| **"Introduction"** | means (i) the passing to the Client of a curriculum vitæ or information which identifies a PSC or (ii) the Client's interview of or meeting with a PSC (in person, by telephone or by any other means), following the Client's instruction to the Employment Business to supply a temporary worker; or (iii) the supply of a PSC; and, in any case, which leads to an Engagement of that PSC or any individuals engaged by the PSC;<br>and "Introduces" and "Introduced" shall be construed accordingly; |
| **"Introduction Fee"** | means the fee payable in accordance with clause 6 (Charges); |
| **"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; |

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| **"NICs Legislation"** | means the Social Security (Categorisation of Earners) Regulations 1978 |
| **"Off-Payroll Rules"** | means Part 2, Chapter 10 ITEPA; |
| **"Outside IR35"** | means an Assignment which the Client has determined does not meet the conditions of Section 61M ITEPA; |
| **"PSC"** | means the person, firm or corporate body in which the PSC Staff meet the Conditions of Liability, and which is Introduced to the Client by the Employment Business to deliver the PSC Services, and except where otherwise indicated, includes PSC Staff, any third party to whom the provision of the PSC Services is assigned or sub-contracted in accordance with clause 2.5; |
| **"PSC Fees"** | means the fees payable to a PSC for the provision of the PSC Services; |
| **"PSC Services"** | means the services to be provided or the Specified Deliverables to be delivered by the PSC; |
| **"PSC Staff"** | means any officer, employee, worker or representative of the PSC supplied to provide the PSC Services (and, except where otherwise indicated, includes any substitute or any officer, employee, worker or representative of any third party to whom the provision of the PSC Services is assigned or sub-contracted in accordance with clause 2.5); |
| **"Remuneration"** | includes gross base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments taxable, (and, where applicable, non-taxable) payable to or receivable by a PSC for services rendered to or on behalf of the Client. Where a company car is provided, a notional amount will be added to the sums paid to the relevant PSC in order to calculate the Introduction Fee; |
| **"Specified Deliverables"** | means as set out in Schedule 1; |
| **"Status Determination Statement"** | means a written statement which meets the requirements of Section 61NA ITEPA and in which the Client confirms its decision, and the reasons for its |

decision, on the application of the Off-Payroll Rules to an Assignment;

1.2. Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.

1.3. The headings contained in this Agreement are for convenience only and do not affect their interpretation.

1.4. Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of this Agreement) and all subordinate legislation made (before or after this Agreement) under it from time to time.

## 2. THE AGREEMENT

2.1. This Agreement together with the Schedule(s) and any applicable Assignment Details Form constitutes the entire agreement between the Employment Business and the Client for the supply of consultancies by the Employment Business to the Client (**"the Agreement"**). This Agreement is deemed to be accepted by the Client by virtue of its request for, meeting with, or Engagement of a PSC or the passing of any information about a PSC to any third party following an Introduction.

2.2. Unless otherwise agreed in writing by a director of the Employment Business, this Agreement shall prevail over any terms of business or purchase conditions (or similar) put forward by the Client.

2.3. Subject to clause 6.2 no variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between a director the Employment Business and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.

2.4. The Client acknowledges that the PSC and the PSC Staff carrying out the Assignment have opted out of the Conduct Regulations and further that any substitute or any person to whom the performance of the PSC Services has been assigned or sub-contracted has opted out of the Conduct Regulations and that none of the Conduct Regulations apply to any Assignments governed by this Agreement.

2.5. As the Client has assessed the Assignment as Outside IR35, the Client acknowledges that:

2.5.1. the PSC may supply any of the PSC Staff to perform the PSC Services; and

2.5.2. where a PSC is unable to provide any part of the PSC Services for whatever reason, the PSC shall be entitled to send a substitute, or to assign or sub-contract the performance of the PSC Services provided that the Employment Business and the Client are reasonably satisfied that the substitute, assignee or sub-contractor has the required skills, qualifications, resources and personnel to provide the PSC Services to the required standard and the terms of any such substitution, assignment or sub-contract contain the same acknowledgements under and obligations imposed by the agreement between the PSC and the Employment Business. In these circumstances, the Client shall not unreasonably withhold or delay any agreement sought for the substitution, assignment or sub-contracting of the PSC Services.

2.6. As the Client has assessed the Assignment as Outside IR35, the Client acknowledges that the PSC shall be permitted to determine how it will provide the PSC Services and will have the flexibility to determine the number of hours required and the times worked, to complete the PSC Services, subject to the relevant PSC complying with any reasonable operational requirements of the Client. The PSC will be at liberty to determine the location at which it will provide the PSC Services, but where the PSC Services are undertaken at the Client's site, the PSC will comply with any reasonable requirements relating to working hours, and any other operational requirements in relation to the Client's site. Accordingly, the Client acknowledges that neither the PSC nor any assignee or sub-contractor work under (or subject to the right of) supervision, direction or control of the Client as to the manner in which they provide the PSC Services.

2.6.1.

## 3. THE CLIENT'S OBLIGATIONS REGARDING THE OFF-PAYROLL RULES

3.1. The Client confirms that it is not an Exempt Organisation and so acknowledges that where an individual provides their services through a PSC, the Client has certain obligations under the Off-Payroll Rules. The Client undertakes to advise the Employment Business immediately if it becomes an Exempt Organisation.

3.2. For the Employment Business to meet its obligations under the Off-Payroll Rules the Client will:

3.2.1. give its Status Determination Statement (**"SDS"**) to both the PSC Staff originally supplied to provide the PSC Services and the Employment Business before the relevant Assignment starts. For the purposes of this Agreement, the Client has determined that the Assignment is Outside IR35. The Client will give complete and accurate reasons for its status decision. The Client will use best endeavours when making its status decision. The Client acknowledges that if it does not give a valid SDS (a) the Employment Business may not be able to supply or Introduce a PSC to it but (b) if the Employment Business does supply or Introduce a PSC to the Client, the Client will be deemed to be the fee-payer (as defined in the Off-Payroll Rules) until it gives a valid SDS;

3.2.2. the Client will respond in full within 7 days to any query about its SDS raised by any of the PSC, the PSC Staff providing their services through the PSC or the Employment Business;

3.2.3. the Client will review the circumstances of the Assignment every 6 months to check whether its SDS remains correct. If the Client reviews the circumstances of the Assignment and the status of the Assignment has changed, the Client must withdraw its existing SDS and issue a new SDS immediately, stating the reason and date from which the new SDS applies.

## 4. INFORMATION TO BE PROVIDED BY THE EMPLOYMENT BUSINESS

Before the start of an Assignment, or if this is not practical, within 3 working days of the start of an Assignment, the Employment Business will send the Client an Assignment Details Form.

## 5. CONFIRMATION OF DELIVERY OF THE PSC SERVICES

5.1. At the end of each month of the Assignment (or at the end of the Assignment where the Assignment is for a period of less than 1 month or is completed or finished before the end of a month) the Client shall confirm delivery of the PSC Services by signature of a form provided to the Client for this purpose.

5.2. The Client agrees that by confirming delivery of the PSC Services it also agrees that the PSC Services have been provided satisfactorily, or the Specified Deliverables have been delivered, in accordance with this Agreement. If the Client is dissatisfied with the work performed by a PSC, or considers that the Specified Deliverables have not been delivered, the provisions of clause 9.2 (Termination of an Assignment) shall apply;

## 6. CHARGES

6.1. The Charges are calculated as set out in Schedule 1. The Client agrees to pay the Charges. VAT is payable at the applicable rate on the entirety of the Charges.

6.2. The Employment Business reserves the right to vary the Charges agreed with the Client, by giving written notice to the Client so that it can comply with any additional liability imposed by statute or other legal requirement or entitlement.

6.3. The Employment Business will invoice the Client on a monthly basis. The Client will pay the Charges within 30 days of the date of the invoice.

6.4. The Employment Business reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England.

6.5. The Client will pay the Charges due under this clause 6 and has no right to set-off, deduct or withhold any sums due.

## 7. PAYING A PSC

The Employment Business is responsible for paying the PSC.

## 8. INTRODUCTION FEES

8.1. The Client shall be liable to pay the Employment Business an Introduction Fee where the Employment Business Introduces the PSC to the Client and:

8.1.1. the Client Engages the PSC or any PSC Staff other than through the Employment Business either during the Assignment or within a period of 6 months from the termination of the Assignment in respect of which the PSC or PSC Staff was supplied, or if there was no supply, within 6 months of the Introduction of the PSC or PSC Staff by the Employment Business to the Client; or:

8.1.2. the Client introduces the PSC to a third party (including any member of the Client's Group), and such introduction results in an Engagement of the PSC or any PSC Staff by the third party other than through the Employment Business either during the Assignment or within 6 months from the termination of the Assignment.

8.2. The Employment Business will calculate the Introduction at 30% of the PSC Fees payable to the PSC. Where the amount of the PSC Fees payable to the PSC is not known, the Introduction Fee will be calculated by multiplying the Charges pro-rata over 12 months.

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

8.4. VAT is payable in addition to any Introduction Fee due.

## 9. TERMINATION OF THE ASSIGNMENT

9.1. The Assignment will terminate on the end date set out in the relevant Assignment Details Form. The Client, the Employment Business or the PSC may terminate the Assignment earlier by giving written notice for the period of notice specified in the relevant Assignment Details Form. However and whenever an Assignment terminates, the Client must pay any Charges due under clause 6 (Charges) above.

9.2. Notwithstanding the provisions of clause 9.1, the Client may terminate an Assignment with immediate effect by notice in writing to the Employment Business where:

9.2.1. the PSC has acted in breach of any statutory or other reasonable rules and regulations applicable to them while providing the PSC Services; or

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

9.2.3. the Client reasonably considers that a PSC 's provision of the PSC Services is unsatisfactory or that the PSC has not delivered the Specified Deliverables.

9.3. The Employment Business may terminate an Assignment with immediate effect by notice in writing to the Client if:

9.3.1. the Client is in wilful or persistent breach of its obligations under this Agreement and where the breach is capable of being remedied, fails to remedy the breach within 7 days of receiving written notice from the Employment Business to do so; or

9.3.2. the Client fails to pay any amount which is due to the Employment Business in full and on the date that the payment falls due; or

9.3.3. the Client is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; or

9.3.4. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Client, or an order is made for the winding up of the Client, or where the Client passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation or amalgamation where the resulting entity will assume all the obligations of the other party under this Agreement); or

9.3.5. the Employment Business knows or suspects that the Client is an Exempt Organisation;

9.3.6. the Employment Business knows or suspects that the Client has not used best endeavours in providing its SDS; or

9.3.7. the Client advises that the circumstances of that Assignment have changed so that the Outside IR35 Assignment has become an Inside IR35 Assignment; or

9.3.8. the Employment Business knows or suspects that the PSC 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 PSC Services, in breach of this Agreement; or

9.3.9. the Client does not give accurate and sufficient evidence that the PSC Staff do not work under (or subject to the right of) supervision, direction or control of any person as to the manner in which it provides the PSC Services; or

9.3.10. either the Client or the PSC gives the Employment Business fraudulent information with the purpose of avoiding the Off-payroll rules or a document which fraudulently states that the PSC Staff do not work under (or is not subject to) the supervision, direction or control of any person as to the manner in which they provide the PSC Services; or

9.3.11. where the Employment Business knows or suspects that the PSC Staff no longer meet the Conditions of Liability in relation to the PSC; or

9.3.12. either the Client or the PSC enters into avoidance arrangements where the main purpose, or one of their main purposes, is to secure a tax advantage; or

9.3.13. the Employment Business knows or suspects that the Client has breached the Data Protection Laws.

## 10. CONFIDENTIALITY AND DATA PROTECTION

10.1. All information relating to a PSC is confidential and where that information relates to an individual is also subject to the Data Protection Laws and is provided solely for the purpose of providing PSC Services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the information at all times.

10.2. The Client must keep confidential all information relating to the Employment Business's business which is capable of being confidential and must not divulge such information to any third party, except information which is in the public domain.

## 11. INTELLECTUAL PROPERTY RIGHTS

All copyright, trademarks, patents and other intellectual property rights resulting from the provision of any Assignment Services by a PSC or any third party to whom the PSC Services are assigned or sub-contracted, shall belong to the Client, except such rights as may be expressly owned or retained by the relevant PSC or assignee or sub-contractor, and set out in the relevant Assignment Details Form. Accordingly, the Employment Business shall use its reasonable endeavours to ensure that a PSC shall (and any relevant member of an Intermediary shall) execute all such documents and do all such acts in order to give effect to the Client's rights under to this clause.

## 12. LIABILITY

12.1. Whilst the Employment Business makes reasonable efforts to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from a PSC and to provide the same in accordance with the Assignment details as provided by the Client, the Employment Business does not accept liability for any Losses incurred by the Client, arising from the failure to provide a PSC, for completion of the Assignment, the PSC Services, or the Specified Deliverables, or from the negligence, dishonesty, misconduct or lack of skill of a PSC or if a PSC terminates the Assignment for any reason. For the avoidance of doubt, the Employment Business does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.

12.2. As the Client has determined that the Assignment is an Outside IR35 Assignment, the Client warrants that neither it nor the Employment Business has (or has the right to) supervise, direct or control a contractor working through a PSC as to the manner in which they provide the relevant PSC Services. The Client will notify the Employment Business in writing if it exercises or seeks the right to exercise supervision, direction or control over a PSC working through a PSC, or the PSC, in which case the Employment

Business may terminate the Agreement and/or any Assignments under the Agreement in accordance with clause 9.3. Furthermore no member of the PSC Staff is an agency worker as defined under the AWR.

12.3. The Client shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the PSC and about any requirements imposed by law or by any professional body, which must be satisfied if the PSC is to fill the Assignment**.** The Client will comply in all respects with all relevant statutes, by-laws, codes of practice and legal requirements including the provision of adequate public liability insurance in respect of the PSC.

12.4. The Client shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business by reason of any proceedings, claims or demands by any third party (including specifically, but without limitation, HMRC and any successor, equivalent or related body pursuant to any of the provisions of ITEPA or the NICs Legislation (and/or any supporting or consequential secondary legislation relating thereto)) arising out of any Assignment or arising out of any non-compliance with, and/or as a result of any breach of, this Agreement by the Client.

12.5. The Client shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business by reason of any proceedings, claims or demands by a PSC or any third party arising out of any non-compliance with, and/or as a result of, any breach of the Data Protection Laws by the Client.

## 13. 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, including by email. 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, when that email is sent.

## 14. 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.

## 15. THIRD PARTY RIGHTS

None of the provisions of this Agreement is intended to be for the benefit of or enforceable by third parties and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

## 16. GOVERNING LAW AND JURISDICTION

This Agreement is governed by the law of England & Wales and are subject to the exclusive jurisdiction of the Courts of England & Wales.

***Signed for and on behalf of the Employment Business***

______________________________________________

Simmane Bangura
Managing Director

______________________________________________

***Signed for and on behalf of the Client***

______________________________________________

[print name here]

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

______________________________________________

Date

**SCHEDULE 1: Assignment details**

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| **PSC:** | [insert limited company details] |
| **PSC Staff:** | [insert name of individual supplied by the limited company] |
| **PSC Services:** | [insert description of services to be provided. If project work, detail any stages by which elements of the work must be produced.] |
| **[Specified Deliverables:]** | [if payment will be made only on completion of specific deliverable set those deliverables out here.] |
| **Client name:** | [insert] |
| **Client address/location where the PSC services are to be provided:** | [insert details] |
| **Start Date**<br>**End Date**<br>**Assignment duration or expected duration:** | [insert]<br>[insert]<br>[insert] |
| **Notice to terminate:** | [insert] |
| **Charges:** | [insert] |
| **Expenses:** | [insert details of any expenses which may be payable to the PSC] |
| **Intellectual Property Rights owned or retained by the PSC:** | [insert details] |
| **Intellectual Property Rights owned or retained by the Client:** | [insert details] |
| **Insurances the PSC is required to hold:** | [Specify the type, level and duration of the insurances to be held. Include any period the PSC must hold the insurances for following completion or termination of the Assignment] |
| **Invoicing Frequency:** | [insert details. If the work is to be delivered in stages, will invoicing frequency reflect those stages?] |
| **Equipment Provided –** | |
| • **By Client:** | [insert] |
| • **By PSC:** | [insert] |