

Terms of Assignment of Consultants via a Limited Company Contractor and Self-Billing Agreement

This agreement must be signed by a DIRECTOR of the Company

This is a contract between:

- (1) MRK Associates Ltd ("the Employment Business") whose VAT registration number is and
- (2) ("The Company") whose VAT registration number is (.....) where applicable

Definitions

1 In this Agreement the following definitions apply:

Assignment means the assignment by the Employment Business, via the Company, of the Relevant Consultant ("the Relevant Consultant") to the client notified to the Company in the relevant Assignment Confirmation Letter ('ACL') relating to the type of work requested by the Company in respect of the Relevant Consultant;

Assignment confirmation letter means the letter, e-mail or fax from the Employment Business to the Company notifying the details of the relevant Assignment (which may be following prior acceptance of the Assignment by the Company);

Client means the company, organisation or person notified as such to the Company in the relevant ACL.

Provision of Services

2.1 This Agreement governs all Assignments under which the Company provides the services of the Relevant Consultant to the Employment Business.

2.2 Neither the Company nor the Relevant Consultant is under any obligation to accept any Assignment which may be offered by the Employment Business from time to time, but on the acceptance of any Assignment the Company shall procure that the Relevant Consultant will supply his/her services to the Employment Business in order to enable it to supply to the Client.

2.3 Throughout the period of this Agreement, the Relevant Consultant will be working under a contract for services with the Company or employed by the Company on a contract of service. For the avoidance of doubt, this Agreement does not give rise to a contract of employment or any form of contractual relationship between the Employment Business and the Relevant Consultant.

2.4 The Company acknowledges that there may be periods when no suitable work is available, and agrees that the suitability of any Relevant Consultant for a particular Assignment shall be determined solely by the Employment Business taking account of all relevant factors including the personal information supplied by the Company to the Employment Business (referred to in 3.1 below.)

2.5 The Employment Business shall incur no liability to the Company or any Relevant Consultant (save in respect of remuneration for hours already worked by the Relevant Consultant under this Agreement) if it:

- (a) fails to offer suitable (or any) Assignment; or
- (b) terminates an Assignment with or without notice for any reason whatsoever regardless of any previous notification to the Company regarding the duration or likely duration of the relevant Assignment. Where notice is required by the Client it shall be detailed in the ACL.

2.6 The Employment Business may terminate the Assignment forthwith by notice to the Company at any time during the first week from the beginning of the period of the Assignment. Thereafter, the Assignment may be terminated by the Employment Business giving to the Company the required written notice as set out in the ACL. The Employment Business may terminate the Assignment forthwith by notice to the Company at any time if immediate notice is served to the Employment Business by the Client.

2.7 The Employment Business may terminate the Assignment forthwith in the following circumstances;

- (a) the Relevant Consultant being in breach of any terms of the Assignment.
- (b) the Client going into receivership, insolvency, administration or any other arrangement with its creditors, including but not limited to, receivership.
- (c) the Client terminates its contract with the Employment Business for the services of the Relevant Consultant for any reason whatsoever.

2.8 The Company may terminate the Assignment by giving to the Employment Business the required written notice as set out in the ACL.

2.9 The Company may terminate the Assignment by giving the written notice to the Employment Business if the Client fails to accord the Company or the Relevant Consultant reasonable access to premises, equipment, personnel or other information necessary for the Company to provide services.

2.10 The Company agrees that, if the Client wishes to employ the Relevant Consultant on a permanent basis (or where the Relevant Consultant is introduced to a third party), the Employment Business is entitled to charge the client a fee or offer the Client an extended period of hire for the services of the Relevant Consultant.

Undertakings

3.1 The Company confirms that all personal information supplied to the Employment Business relating to the Relevant Consultant (including, but not limited to, details of identity, career information, professional and academic qualifications, criminal record and eligibility to work in the UK) is correct, and undertakes to inform the Employment Business without delay of any relevant changes to such information or any additional information that may affect any Assignment (and/or his/her suitability to continue in it) as appropriate.

3.2 Whilst the Company's method of work shall be its own, the Company undertakes to procure that any Relevant Consultant will:

- (a) co-operate with the Client's staff and accept the reasonable instruction of any responsible person in the Client's organisation;
- (b) comply with the health and safety policy of the Client and to take all reasonable steps to safeguard his/her own safety and the safety of any other person who may be affected by his/her actions;
- (c) not engage in any conduct determined detrimental to the interests of the Client; and
- (d) comply with the Client's relevant policies and procedures to which their attention has been drawn by the Client or might reasonably be expected to ascertain and to sign any relevant documentation required by the Client.

3.3 The Company shall use good quality techniques, materials and standards and execute the Assignment with due care, skill and diligence.

3.4 Where, in connection with the provision of the Services, the Company supplies any goods supplied by a third party, the Company does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to the Company.

3.5 The Company shall be able to provide a substitute for the Relevant Consultant where necessary provided always prior written approval is given by the Client and the Employment Business and provided that the substitute has at least the necessary skill set, qualification and experience to perform the Services and complies with and adheres to the requirements of the Client and the Terms of Assignment. Notwithstanding any substitution, the Company and the Relevant Consultant shall remain responsible for the services provided. The Client and the Employment Business reserve the right to refuse any proposed substitution at their sole discretion.

3.6 The Company warrants that they are not a managed service company as defined by the amendments to the Income Tax (Earnings and Pensions) Act 2003 and shall indemnify and hold harmless the Employment Business against any losses including without limitation claims and expenses arising directly or indirectly from the Company's breach of this clause 3.6

3.7 The Company and the Relevant Consultant warrants that the Relevant Consultant is a director of the Company with financial and management control over the Company

3.8 The Company warrants that it shall comply with the self-billing requirement pursuant to Schedule 1 and in particular the VAT obligation where applicable.

Rate of Pay

4.1 The Employment Business shall pay the Company weekly in arrears at the rate specified in the Relevant Assignment Confirmation Letter for each hour/day worked by the Relevant Consultant (whether or not the Employment Business receives payment from the Client in respect of such work) provided that, without prejudice to the generality of clause 10.4 below, the Company shall indemnify the Employment Business in respect of any tax or employee's national insurance together with any interest or penalties, costs or expenses incurred by the Employment Business arising out of or in connection with any such payments. For the avoidance of doubt all sums paid by the Employment Business shall be inclusive of VAT where applicable.

4.2 An appropriate invoice must, where relevant, constitute a proper VAT invoice and must specifically relate to and be dated for the week of supply. The company must supply a UK certificate of incorporation, UK bank details form and VAT certificate where the Company is VAT registered. For the avoidance of doubt, the Company shall be required to raise an appropriate invoice where the Employment Business has agreed in a written document with the Company that clause 3.8 and Schedule 1 shall not apply.

4.3 Subject to any statutory entitlement under the relevant legislation, the Company is not entitled to receive payment under this Agreement for the time not spent by the Relevant Consultant actually working on Assignment, whether in respect of travelling to the Client's premises, lunch breaks, other rest breaks, holiday, illness or for any other reason, unless otherwise agreed.

4.3 To the extent permitted by law, and without prejudice to any other legal remedy which the Employment Business may have, the Company hereby consents to the deduction from any sums owed by the Employment Business to the Company under this Agreement from time to time, any sums owed from time to time by the Company to the Employment Business (which may include any overpayments by the Employment Business to the Company and the recovery of any costs incurred by the Employment Business as a result of a breach of this assignment by the Company)

Worksheets

5.1 At the end of each week the Company shall procure the delivery to the Employment Business of a worksheet authorised manually or electronically both by the Relevant Consultant and by an authorised representative of the Client, confirming the number of hours/days worked by the Company pursuant to the Assignment.

5.2 Failure to deliver a duly signed timesheet in accordance with clause 5.1 may result in a delay in payment to the Company.

Unavailability for Work

6.1 If the Relevant Consultant is unable for any reason to work on an Assignment, the Company shall procure that both the Client and the Employment Business are informed as soon as possible and no later than 10.00 a.m. on the first day of absence to enable alternative arrangements to be made.

6.2 The Company shall provide the Employment Business with reasonable notice of any period of absence that the Relevant Consultant plans to take and no absence may be taken without mutual consent of the Company and the Employment Business. No payment will be made by the Employment Business to the Company for any period which the Company fails to perform the Services, including annual leave.

Confidentiality

7.1 The Company shall not and shall procure that the Relevant Consultant will not at any time divulge to any person, nor use for their own or any other person's benefit, any information in relation to the Client's or the Employment Business's employees, business affairs, transactions or finances.

7.2 Upon termination of each Assignment (or any time during the relevant Assignment on request), the Company shall and shall procure that the Relevant Consultant will deliver to the Client or the Employment Business (as appropriate) all books, documents papers, materials and other property in whatever form belonging to or relating to the business of the Client or the Employment Business (as appropriate) which may then be in his/her possession or under his/her control.

Intellectual Property Rights

8.1 The Company shall procure that all intellectual property rights that are created pursuant to this Agreement or that arise from it shall, immediately upon

creation, become the property of the Employment Business or the Client as appropriate and all moral or other rights that may exist in such material shall be waived.

8.2 The Company warrants to the Client that;

(a) No documents or other material and data or other information and devices or processes will be provided by the Company in the provision of the Services which infringe any third party intellectual property rights.

(b) Any documents or other materials created by the Company in the provision of the Services for use by the Client will be original and created specifically for the Client

Anti-Virus

9.1 The Company shall use all reasonable endeavours to ensure that any services supplied under the Assignment are free from any 'Virus' and shall maintain a strict 'Anti-Virus' policy for checking same.

9.2 For the purpose of this provision 'Virus' shall include (but not be limited to) any corruption, deterioration, alteration of or addition to any data, code, media, software or other material howsoever generated or relating to the same or anything contained therein and without prejudice to the foregoing as may be generally understood within the computer industry as at that date.

9.3 The Company should not use its own software without the written consent of the Client.

Loss

10.1 Notwithstanding any other provision of this Agreement, but subject to clause 10.3 below, the Employment Business shall not be liable to the Company arising out of or in connection with this Agreement and/or the provision of (or any delay in providing or failure to provide) the Assignment and/or the provision of (or any delay in providing or failure to provide) the Assignment for (i) any loss of or damage of profit, revenue, savings, data, use, contract, goodwill or business or (ii) any indirect or consequential loss or damage, in each case howsoever caused or arising, including but not limited to any loss or damage suffered by reason of any act or omission of the Client.

10.2 The term "howsoever caused or arising" when used in this clause 10 shall be construed widely to cover all causes and actions giving rise to liability, including but not limited to (i) whether arising by reason of any misrepresentation (whether made prior to and/or in this Agreement), negligence, breach of statutory duty, other tort, breach of contract, restitution or otherwise and (ii) whether arising under any indemnity and (iii) whether caused by any total or partial failure or delay in supply of the Assignment.

10.3 Nothing in this Agreement shall limit or exclude any party's liability for fraud or for death or personal injury caused by negligence, or to the extent otherwise not permitted by law.

10.4 The Company shall indemnify the Employment Business in respect of any costs, claims, liabilities or expenses arising out of or in connection with any claims made by the Relevant Consultant in relation to the Assignment.

10.5 The Company shall have in place, policies of insurance of sufficient value to cover the provision of services pursuant to the agreement, including but not limited to Employers Liability, Professional Indemnity, and Public Liability and which shall cover any loss suffered or incurred by the Employment Business and / or the Client and their respective officers or employees or any third party by the act of negligence or omission of the Company. The Company shall at its own expense effect and maintain such insurance as is deemed appropriate in respect of its obligations under the Assignment and provide evidence of the same on demand. For the avoidance of doubt, the Company providing evidence of their insurance is not a waiver of any nature by the Employment Business or the Client of their rights under this Agreement.

10.6 Notwithstanding any other provision of the Terms of Assignment, the Company shall indemnify and hold harmless the Employment Business and the client and their respective officers, employees and agents or third parties from and against any and all claims, demand losses, liabilities, damage, costs and expenses (including legal expenses) whatsoever and howsoever arising in relation to or in connection with the provision of services by the Company and Relevant Consultant (including substitute) whether the same are intentional, reckless, negligent or merely inadvertent.

Waiver

11 The failure by the Employment Business to enforce at any particular time any one of more of the terms of this Assignment shall not be deemed a waiver of such rights or of the right to subsequently enforce the terms of this

Agreement. No variation or alterations of these terms shall be valid unless approved in writing by the Company and a director of the Employment Business.

Opt-Out

12 The Company shall give notice to the Employment Business of any agreement reached between the Company and the Relevant Consultant pursuant to Regulation 32 (9) of the Conduct of Employment Agencies and Employment Business Regulations 2003

Entire Agreement

13 This Agreement, together with the details provided in the relevant Assignment Confirmation Letter, constitutes the entire and only legally binding agreement between the parties relating to each Assignment, and replaces any previous agreements or arrangements.

Validity

14 If any provision, clause or part-clause of this Agreement is held to be invalid, void, illegal or otherwise unenforceable by judicial body, the remaining provisions of this Agreement shall remain in full force and effect to the extent permitted by law.

Third Parties

15 No provision of this Agreement shall be enforceable by any person who is not a party to it (including the Relevant Consultant) pursuant to the Contract (Rights of Third Parties) Act 1999.

Governing Law

16 This Agreement shall be governed by and construed in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the English Courts.

The Employment Business will endeavour to obtain suitable Assignments for the Relevant Consultant to work as a

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The minimum rate of remuneration the Employment Business reasonably expects to achieve subject to market conditions, assignment period and requirements is

£..... Per

Signature

(on behalf of the Company)

Name.....

Date.....

Signature

(on behalf of the Employment Business)

Name.....

Date.....

If you wish to give notice under regulation 32(9) of the Conduct of Employment Agencies and Employment Business Regulations 2003, that the Regulations do not apply please tick here on behalf of the Company

If you wish to give notice under Regulation 32 (9) of the Conduct of Employment Agencies and Employment Business Regulations 2003, that the Regulations do not apply please tick here acting in capacity of the Relevant Consultant

Important: MRK Associates Ltd cannot provide advice about working through a limited company. We recommend you seek independent financial advice.

Schedule 1

The Company warrants and undertakes:

1. To notify the Employment Business immediately if it:
 - Changes its VAT registration number
 - Ceases to be VAT registered
 - Sells/transfers its business, or part of its business;
 - Becomes VAT registered

UMBRELLA COMPANY ACKNOWLEDGEMENT SIGNED BY THE TEMPORARY WORKER

I hereby acknowledge, warrant and confirm that I am not directly engaged by MRK Associates Ltd (“Employment Business”) but am employed by (“Company”) and supplied to the Employment Business clients as outlined in the Agreement between the Employment Business and the Company titled “Terms of Assignment of Consultants via a Limited Company Contractor and Self Billing Agreement”

Furthermore I am aware that I am required to give notice under Regulation 32 (9) of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 that the Regulations do not apply and shall tick the box below if I do not wish the Regulations to apply.

Signature:
 (“Relevant Consultant”)

Name:

Date: