

## CONTRACT 10: AGREEMENT WITH A SELF-EMPLOYED CONSULTANCY WHO HAS OPTED OUT OF THE CONDUCT REGULATIONS (OUTSIDE IR35 AND NOT UNDER SDC)

### THE PARTIES

- (1) Consultancy or Consultancy Staff (and save where otherwise indicated, includes any third party to whom the provision of consultancy services is assigned or sub-contracted with the prior approval of the Client) ("**the Consultancy**").
- (2) Genius Payroll Limited (registered company no. 07439295) or Genius Contracts Limited (registered company no. 10784415) trading Genius Money of 4 Old Park Lane, Mayfair, London, W1K 1QW trading as Genius Money ("**the Payroll Business/Employment Business**").

### RECITALS

- (A) The Consultancy carries on the business of the provision of consultancy services and has agreed to provide the services specified in the attached schedule ("**the Schedule**") ("**the Consultancy Services**").
- (B) The Payroll Business/Employment Business has requested the Consultancy and the Consultancy has agreed with the Payroll Business/Employment Business, to provide the Consultancy Services to the Client on the terms and subject to the terms of this Agreement.

IT IS AGREED as follows:

### 1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement the following definitions apply:

"Assignment"	means the Consultancy Services to be performed by the Consultancy Staff for the Client for a period of time during which the Consultancy is supplied by the Payroll Business/Employment Business to provide the Consultancy Services to the Client;
"AWR"	means the Agency Workers Regulations 2010;
"Client"	means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) requiring the services of the Consultancy and identified in the attached Schedule;
"Companies Acts"	means the Companies Acts 1985, 1989 and 2006;
"Conduct Regulations"	means the Conduct of Employment Agencies and Payroll Business/Employment Businesses Regulations 2003;
"Confidential Information"	shall mean any and all confidential, commercial, financial, marketing, technical or other information or data of whatever nature relating to the Client or the Payroll Business/Employment Business or their business or affairs (including but not limited to this Agreement, data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information concerning the Assignment) in any form or medium whether disclosed or granted access to, whether in writing, orally or by any other means, provided to the Consultancy or any third party in relation to the Assignment by the Client or the Payroll Business/Employment Business or by a third party on behalf

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of the Client whether before or after the date of this Agreement together with any reproductions of such information in any form or medium or any part(s) of such information;

“Consultancy Fees”	means the fees payable to the Consultancy for the provision of the Consultancy Services as set out in the Schedule. For the avoidance of doubt, the Consultancy Fees include the agreed fees for the Consultancy Services, any expenses or disbursements authorised by the Client and VAT charged at the applicable rate;
“Consultancy Staff”	means such of the Consultancy’s employees, workers, officers or representatives provided to perform the Consultancy Services (and, save where otherwise indicated, includes any officer, employee, worker or representative of any third party to whom the provision of the Consultancy Services is assigned or sub-contracted with the prior approval of the Client);
“Data Protection Laws”	means the Data Protection Act 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;
“IR35 Legislation”	means Chapter 8 of Part 2 of ITEPA and the Social Security Contributions (Intermediaries) Regulations 2000;
“ITEPA”	means the Income Tax (Earnings and Pensions) Act 2003;
“Losses”	means all losses, liabilities, damages, costs, expenses, fines, penalties or interest, whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands; and "Loss" shall be construed accordingly;
“MSC Legislation”	means section Chapter 9 of Part 2 of ITEPA;
“NICs Legislation”	means the Social Security (Categorisation of Earners) Regulations 1978;
“Public Authority”	means (a) as defined in the Freedom of Information Act 2000 and (b) as further defined in Section 61L ITEPA;
“Reporting Requirements”	means the requirements of the Income Tax (Pay as you Earn) (Amendment No. 2) Regulations 2015;
“Specified Intermediary”	means the party required to submit the report to HMRC in compliance with the Reporting Requirements; and
“Transparency Regulations”	means the Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015.

- 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 ("**the Agreement**") constitutes the entire agreement between the Payroll Business/Employment Business and the Consultancy for the supply of the Consultancy Services to the Client and governs the Assignment undertaken by the Consultancy with the Client. This Agreement shall prevail over any other terms put forward by the Consultancy.
- 2.2. For the avoidance of doubt this Agreement shall not be construed as a contract of employment between any Consultancy Staff supplied to provide the Consultancy Services and either the Payroll Business/Employment Business or the Client and any of the liabilities of an employer arising out of the Assignment shall be the liabilities of the Consultancy.
- 2.3. No variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between the Payroll Business/Employment Business and the Consultancy and set out in writing and a copy of the varied Agreement is given to the Consultancy stating the date on or after which such varied Agreement shall apply.
- 2.4. The Schedule shall specify the Client, the Consultancy Fees payable by the Payroll Business/Employment Business and such expenses as may be agreed, any notice period and any other information relevant to the Assignment.

## 3. RELATIONSHIP BETWEEN THE PAYROLL BUSINESS/EMPLOYMENT BUSINESS AND THE CONSULTANCY AND BETWEEN THE CLIENT AND THE CONSULTANCY

- 3.1. The Payroll Business/Employment Business is not obliged to offer Assignments to the Consultancy and the Consultancy is not obliged to accept any Assignment. Both parties acknowledge that there is no intention to create mutuality of obligation during any Assignment or between Assignments.
- 3.2. The Consultancy acknowledges to the Payroll Business/Employment Business that its services are supplied to the Payroll Business/Employment Business as an independent contractor and that accordingly the responsibility of complying with all statutory and legal requirements relating to the Consultancy Staff (including but not limited to matters of taxation and compliance with the immigration laws applicable to the jurisdiction in which the Consultancy Services are provided) shall fall upon and be discharged wholly and exclusively by the Consultancy.
- 3.3. Nothing in this Agreement shall render any member of the Consultancy Staff an employee or worker of either the Payroll Business/Employment Business or the Client. The Consultancy shall ensure that none of the Consultancy Staff holds themselves out as an employee or worker of either the Payroll Business/Employment Business or the Client. In the event that any person should seek to establish any liability or obligation upon the Payroll Business/Employment Business on the grounds that the Consultancy Staff are an employee or worker of the Payroll Business/Employment Business or the Client, the Consultancy shall upon demand indemnify the Payroll Business/Employment Business and/or the Client and keep them indemnified in respect of any such liability or obligation and any related Losses which the Payroll Business/Employment Business shall incur.
- 3.4. The Consultancy acknowledges that no member of the Consultancy Staff is an agency worker as defined under the AWR and that the AWR do not apply in relation to this Agreement or any Assignment under this Agreement. The Consultancy shall indemnify and keep indemnified the Payroll Business/Employment Business (or, as the case may be, the Client) against any Losses the Payroll Business/Employment Business (or the Client) may suffer or incur as a result of any claim made by or on behalf of any member of the Consultancy Staff under the AWR.

- 3.5. The Consultancy shall provide the Consultancy Services and subject to the prior written approval of the Client (which will not be unreasonably withheld or delayed) shall be entitled to assign or sub-contract the performance of the Consultancy Services, provided that the Payroll Business/Employment Business and the Client are reasonably satisfied that the assignee or sub-contractor has the required skills, qualifications, resources and personnel to provide the Consultancy Services to the required standard and that the terms of any such assignment or sub-contract contain the same acknowledgements under and obligations imposed by this Agreement.
- 3.6. Save as otherwise stated in this Agreement, the Consultancy shall be entitled to supply its services to any third party during the term of this Agreement provided that this in no way compromises or is to the detriment of the supply of its services to the Client or amounts to a breach of this Agreement.
- 3.7. Neither the Consultancy nor the Consultancy Staff work under (or subject to the right of) supervision, direction or control by any person as to the manner in which they provide the Consultancy Services. Accordingly, the Consultancy shall be permitted to determine how it will provide the Consultancy Services and, subject to complying with any reasonable operational requirements of the Client, will have the flexibility to determine the number of hours required to provide, and the times during which it will provide, the Consultancy Services. The Consultancy will be at liberty to determine the location at which the Consultancy Services will be provided, but where the Consultancy Services are undertaken at the Client's site, the Consultancy will comply with any reasonable requirements relating to working hours, and any other operational requirements in relation to that site.

#### 4. WARRANTIES PROVIDED BY THE CONSULTANCY

- 4.1. The Consultancy warrants to the Payroll Business/Employment Business that:
  - 4.1.1. by entering into and performing its obligations under this Agreement it will not thereby be in breach of any obligation which it owes to any third party;
  - 4.1.2. the Consultancy Staff have the necessary skills and qualifications to perform the Consultancy Services;
  - 4.1.3. the Consultancy and the Consultancy Staff providing the Consultancy Services have agreed to opt out of the Conduct Regulations and have signed an agreement to that effect and as such understand that none of the Conduct Regulations apply to this Assignment. Further the Consultancy warrants that it will only supply staff to perform the Consultancy Services who have opted out of the Conduct Regulations and further that any person to whom the performance of the Consultancy Services are assigned or sub-contracted has opted out of the Conduct Regulations;
  - 4.1.4. the Consultancy is a personal service company but that it is not a "managed service company" as defined in either section 61B or section 339A of ITEPA and that it is compliant in all respects with ITEPA (including specifically both the IR35 Legislation and the MSC Legislation) and the NICs Legislation;
  - 4.1.5. the Consultancy if a personal service company is incorporated in the UK and that all directors are resident in the UK for tax purposes;
  - 4.1.6. the Consultancy will pay the Consultancy Staff only into a nominated UK bank account in the Consultancy's name;
  - 4.1.7. all information the Consultancy provides to the Payroll Business/Employment Business in order to comply with the Reporting Requirements and clauses 5.1.12 and 5.1.15 is complete and accurate;
  - 4.1.8. the Consultancy and the Consultancy Staff will comply with the Data Protection Laws.

- 4.2. The Consultancy shall procure that the Consultancy Staff, any sub-contractor or assignee performing the Consultancy Services warrant that they are not and do not operate as “managed service companies” as defined in section 61B and section 339A of ITEPA but that they are personal service companies which are compliant in all respects with ITEPA (including specifically the IR35 Legislation and the MSC Legislation) and the NICs legislation.
- 4.3. Further to clause 3.7, the Consultancy warrants that the Consultancy Staff do not work under (or are not subject to the right of) supervision, direction or control of any person as to the manner in which they provide the Consultancy Services. The Consultancy further warrants that it shall advise the Payroll Business/Employment Business in writing immediately that the Consultancy Staff work under (or are subject to the right of) supervision, direction or control of any person.

## 5. THE CONSULTANCY'S OBLIGATIONS

- 5.1. The Consultancy agrees on its own part and on behalf of the Consultancy Staff as follows:
  - 5.1.1. to observe any relevant rules and regulations of the Client's establishment or the premises where the Consultancy Services are being performed to which attention has been drawn or which the Consultancy might reasonably be expected to ascertain, including but not limited to those relating to health and safety to the extent that they are reasonably applicable to the Consultancy and the Consultancy Staff;
  - 5.1.2. to take all reasonable steps to safeguard its own safety, the safety of the Consultancy Staff and the safety of any other person who may be affected by the actions of the Consultancy Staff whilst on the Assignment;
  - 5.1.3. to comply with the Data Protection Laws in respect of any personal data which the Consultancy is granted access to for the purpose of or by reason of the performance of the Consultancy Services;
  - 5.1.4. not at any time to divulge to any person, nor use for its own or any other person's benefit, any Confidential Information relating to the Client's or the Payroll Business/Employment Business' employees, business affairs, transactions or finances;
  - 5.1.5. not to engage in any conduct detrimental to the interests of the Payroll Business/Employment Business and/or the Client which includes any conduct which could bring the Payroll Business/Employment Business and/or the Client into disrepute and/or which results in the loss of custom or business for the Payroll Business/Employment Business and/or the Client;
  - 5.1.6. not to commit any act or omission constituting unlawful discrimination against or harassment of any member of the Payroll Business/Employment Business's or the Client's staff;
  - 5.1.7. not to sub-contract or assign to any third party any of the Consultancy Services which it is required to perform under the Assignment except in accordance with clause 3.5;
  - 5.1.8. to provide the Client and/or the Payroll Business/Employment Business with any progress reports as may be requested from time to time;
  - 5.1.9. to notify the Payroll Business/Employment Business forthwith in writing if it should become insolvent or if any of the circumstances set out in clauses 9.2.5 to 9.2.7 apply;
  - 5.1.10. to confirm in writing whether or not the Consultancy Staff have a material interest (as defined in section 51 ITEPA) in the Consultancy. A “material interest” includes holding more than 5% of the shares of the Consultancy;

- 5.1.11. to comply with all relevant legal obligations, including but not limited to ITEPA, the NICs Legislation, VAT legislation and the Companies Acts and all statutory obligations;
  - 5.1.12. to provide the Payroll Business/Employment Business with all such information it may require to comply with (a) the Reporting Requirements where it is the Specified Intermediary or (b) any contractual obligations the Payroll Business/Employment Business has to provide information to the Specified Intermediary (where it is a party other than the Payroll Business/Employment Business) to enable the Specified Intermediary to comply with its Reporting Requirements;
  - 5.1.13. to provide the Payroll Business/Employment Business on request, with any information required to comply with Transparency Regulations;
  - 5.1.14. to notify the Payroll Business/Employment Business in writing immediately if it becomes subject to a HMRC investigation or compliance activity including but not limited to any of ITEPA, the NICs legislation or VAT legislation;
  - 5.1.15. to update the Payroll Business/Employment Business promptly where any of the information required under clause 5.1.12 to 5.1.14 changes; and
  - 5.1.16. to provide at its own cost, subject to any agreement to the contrary specified in the Schedule all such necessary equipment as is reasonable for the adequate performance by the Consultancy Staff of the Consultancy Services.
- 5.2. If the Consultancy is unable for any reason to provide the Consultancy Services during the course of the Assignment, the Consultancy should inform the Payroll Business/Employment Business as soon as is reasonably practicable but in any event, no later than 1 hour after it becomes aware of any event which renders it unable to provide the Consultancy Services so as to enable the Payroll Business/Employment Business to discharge its obligations to the Client.
- 5.3. If, either before or during the course of an Assignment, the Consultancy becomes aware of any reason why it or the Consultancy Staff may not be suitable for an Assignment, the Consultancy shall notify the Payroll Business/Employment Business without delay.
- 5.4. The Consultancy acknowledges that any breach of its obligations set out in this clause may cause the Payroll Business/Employment Business to suffer Loss and that the Payroll Business/Employment Business reserves the right to recover such Losses from the Consultancy by way of set off or deduction from any sums owed by the Payroll Business/Employment Business to the Consultancy.
- 6. THE PAYROLL BUSINESS/EMPLOYMENT BUSINESS'S OBLIGATIONS**
- 6.1. Throughout the term of this Agreement the Payroll Business/Employment Business will:
- 6.1.1. pay the Consultancy the agreed Consultancy Fees in respect of the provision of the Consultancy Services in accordance with clause 8 below, subject to any right of set off or deduction in clause 5.4;
  - 6.1.2. provide the Consultancy with the information set out in the Schedule in order for the Consultancy to arrange for the provision of the Consultancy Services; and
  - 6.1.3. advise the Consultancy of any health and safety information or advice which it receives from the Client which may affect the Consultancy Staff during the Assignment.
- 7. INVOICING**
- 7.1. Upon completion of the Assignment, or as may be agreed and specified in the Schedule, at the end of each week of the Assignment the Consultancy shall deliver to the Payroll Business/Employment Business its invoice for the Consultancy Fees due from the Payroll Business/Employment Business to the Consultancy giving a detailed breakdown showing

the work performed and the time spent by the Consultancy in providing the Consultancy Services,

- 7.2. The Consultancy shall obtain the signature of an authorised representative of the Client as verification of execution of the provision of the Consultancy Service for each of its invoices.
- 7.3. The Consultancy's invoice must be received by the Payroll Business/Employment Business by no later than 12pm on Tuesday following the week to which it relates. The Consultancy's invoice should bear the Consultancy's name, the name of the Consultancy Staff who provided the Consultancy Services to which the invoice relates, the Consultancy's company registration number and VAT number and should state any VAT due on the invoiced sum.
- 7.4. The Payroll Business/Employment Business shall not be obliged to pay any fees to the Consultancy unless an invoice has been properly submitted by the Consultancy in accordance with this clause 7 and until the Client has verified the execution of the Assignment.
- 7.5. The Payroll Business/Employment Business shall not be obliged to pay any Consultancy Fees to the Consultancy that are to be withheld or not processed by the Client, regardless of reasons why the Client is withholding payment. See clause 8.6 & 8.1.4.

## 8. CONSULTANCY FEES

- 8.1. The Payroll Business/Employment Business will pay the Consultancy the Consultancy Fees within 7 days of receipt of payment of the Consultancy Fees from the Client subject to:
  - 8.1.1. the satisfactory performance of the Services;
  - 8.1.2. the Consultancy's compliance with this Agreement;
  - 8.1.3. the Payroll Business/Employment Business's receipt of the Consultancy's invoice in accordance with clause 7 above; and
  - 8.1.4. payment by the Client of the Payroll Business/Employment Business's charges for the Consultancy Services.
- 8.2. The Consultancy shall be responsible for any PAYE Income Tax and National Insurance Contributions and any other taxes and deductions payable in respect of the Consultancy Staff for the Assignment (including any social fund contributions payable in any other Member State pursuant to a valid A1, E101 or E102 certificate issued to any of the Consultancy Staff).
- 8.3. The Payroll Business/Employment Business will pay the Consultancy Fees to the Consultancy and not to any third party or member of the Consultancy Staff, any sub-contractor or assignee. The Payroll Business/Employment Business will pay the Consultancy Fees into a UK business bank account only.
- 8.4. The Payroll Business/Employment Business shall not be obliged to pay the Consultancy for any periods during which the Consultancy Services are not provided, whether this is due to the Consultancy being unable to provide the Consultancy Services or where the Client does not require the Consultancy Services or otherwise in respect of holidays, illness or absence of the Consultancy Staff.
- 8.5. The Consultancy shall bear the cost of any training which the Consultancy Staff may require in order to perform the Consultancy Services.
- 8.6. The Payroll Business/Employment Business shall not be obliged to pay any Consultancy Fees to the Consultancy that are to be withheld or not processed by the Client, regardless of reasons why the Client is withholding payment. See clause



**9. TERM AND TERMINATION**

- 9.1. This Agreement shall commence on the date set out in the Schedule/CCO and shall continue until completion of the Consultancy Services to the reasonable satisfaction of the Client at which time this Agreement shall expire automatically unless previously terminated by either the Payroll Business/Employment Business or the Consultancy giving the other party the period of notice specified in the attached Schedule.
- 9.2. Notwithstanding clauses 9.1 and 9.3 of this Agreement, the Payroll Business/Employment Business may without notice and without liability instruct the Consultancy to cease work on the Assignment at any time, where:
- 9.2.1. the Consultancy has acted in breach of the rules and regulations applicable to third parties providing services to the Client; or
  - 9.2.2. the Consultancy has committed any serious or persistent breach of any of its obligations under this Agreement; or
  - 9.2.3. the Client reasonably believes that the Consultancy has not observed any condition of confidentiality from time to time; or
  - 9.2.4. the Client is dissatisfied with the Consultancy's provision of the Consultancy Services and has terminated the Assignment; or
  - 9.2.5. either the Client or the Consultancy is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; or
  - 9.2.6. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Client or the Consultancy; or
  - 9.2.7. an order is made for the winding up of either the Client or the Consultancy, or where either the Client or the Consultancy passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation or amalgamation where the resulting entity will assume all the obligations of the other party under this Agreement); or
  - 9.2.8. the Payroll Business/Employment Business suspects or has notice that that the Consultancy has not complied with any of the requirements of ITEPA, the NICs Legislation or VAT requirements; or
  - 9.2.9. any member of the Consultancy Staff is suspected of any fraud, dishonesty or serious misconduct; or
  - 9.2.10. the Consultancy is unable to perform the Consultancy Services for 2 days or more; or
  - 9.2.11. the Payroll Business/Employment Business knows or suspects that the Consultancy or the Consultancy Staff work under (or subject to the right of) supervision, direction or control of any person as to the manner in which they provide the Consultancy Services in breach of this Agreement; or
  - 9.2.12. either of the Client or the Consultancy fails to provide accurate and sufficient evidence that neither the Consultancy nor the Consultancy Staff work under (or subject to the right of) supervision, direction or control of any person as to the manner in which they provide the Consultancy Services; or
  - 9.2.13. the Consultancy fails to comply with clause 14.3; or
  - 9.2.14. the Payroll Business/Employment Business knows or suspects that the Client is a Public Authority; or



9.2.15. the Payroll Business/Employment Business knows or suspects that either the Consultancy or the Consultancy Staff have breached the Data Protection Laws.

9.3. The Consultancy acknowledges that the continuation of the Assignment is subject to and conditioned by the continuation of the contract entered into between the Payroll Business/Employment Business and the Client. In the event that the contract between the Payroll Business/Employment Business and the Client is terminated for any reason the Assignment shall cease with immediate effect without liability to the Consultancy.

9.4. Failure by the Consultancy to give full and proper notice of termination as required in the Schedule attached shall constitute a breach of contract and shall entitle the Payroll Business/Employment Business to claim damages from the Consultancy for any resulting Losses suffered by the Payroll Business/Employment Business.

## 10. INTELLECTUAL PROPERTY RIGHTS

The Consultancy acknowledges that all copyright, trademarks, patents and other intellectual property rights deriving from the provision of the Consultancy Services, by the Consultancy, the Consultancy Staff and/or any third party to whom the Contract is assigned or sub-contracted, for the Client during the Assignment shall belong to the Client, save such rights as may be expressly owned or retained by the Consultancy and set out in the Schedule. Accordingly the Consultancy shall (and shall procure that any relevant member of the Consultancy Staff shall) execute all such documents and do all such acts as the Payroll Business/Employment Business shall from time to time require in order to give effect to the Client's rights pursuant to this clause.

## 11. CONFIDENTIALITY

11.1. In order to protect the confidentiality and trade secrets of the Client and/or the Payroll Business/Employment Business and without prejudice to every other duty to keep secret all information given to it or gained in confidence the Consultancy agrees on its own part and on behalf of its Consultancy Staff as follows:

11.1.1. not at any time whether during or after the Assignment (unless expressly so authorised by the Client or the Payroll Business/Employment Business as a necessary part of the performance of its duties) to disclose to any person or to make use of any of the trade secrets or Confidential Information of the Client or the Payroll Business/Employment Business with the exception of information already in the public domain;

11.1.2. to deliver up to the Client or the Payroll Business/Employment Business (as directed) at the end of the Assignment all documents and other materials belonging to the Client (and all copies) which are in its possession including documents and other materials created by it or the Consultancy Staff during the course of the Assignment;

11.1.3. not at any time to make any copy, abstract, summary or précis of the whole or any part of any document or other material belonging to the Client except when required to do so in the course of its duties under the Assignment in which event any such item shall belong to the Client or the Payroll Business/Employment Business as appropriate.

## 12. COMPUTER EQUIPMENT WARRANTY

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

## 13. RESTRICTION

The Consultancy shall not and shall procure that the Consultancy Staff shall not during the Assignment or for a period of 12 months following the termination of the Assignment supply the services of the Consultancy Staff directly, or through any other person, firm or company, to any Client for whom it has carried out the Assignment at any time during the previous 6 months save in the

case of supply through an Payroll Business/Employment Business or recruitment consultancy with whom the Consultancy was also registered at the date of commencement of the Assignment.

#### 14. CONTRACT MONITORING AND AUDITS

14.1. The Payroll Business/Employment Business reserves the right to audit the Consultancy on an annual/ad hoc basis to ensure compliance with this Agreement and all statutory requirements in relation to all Consultancy Staff supplied to provide the Consultancy Services including but not limited to ITEPA and the NICs legislation. The Payroll Business/Employment Business will give the Consultancy 14 days' notice of such audit.

14.2. To assist the Payroll Business/Employment Business in its audit the Consultancy will:

14.2.1. maintain such records as are necessary to comply with this Agreement and all statutory requirements in relation to all Consultancy Staff supplied to provide the Consultancy Services, and will provide copies of the same to the Payroll Business/Employment Business on request;

14.2.2. provide the Payroll Business/Employment Business with access to its premises and all records relating to all Consultancy Staff supplied to provide the Consultancy Services.

14.3. If having conducted an audit, the Payroll Business/Employment Business requires the Consultancy to take any action the Consultancy shall take such action within the time period specified in writing by the Payroll Business/Employment Business. If the Consultancy fails to take such action or to rectify the matter to the Payroll Business/Employment Business's satisfaction, the Payroll Business/Employment Business can terminate this Agreement in accordance with clause 9.

#### 15. LIABILITY

15.1. The Consultancy shall:

15.1.1. be liable for any and all Losses or injury to any party resulting from the deliberate and/or negligent acts or omissions of the Consultancy or Consultancy Staff during an Assignment, or for the acts or omissions of any assignee or sub-contractor to whom the Consultancy assigns or sub-contracts the performance of the Consultancy Services, during an Assignment;

15.1.2. obtain adequate employer's liability Insurance, public liability insurance, professional indemnity insurance and any other suitable policies of insurance in respect of the Consultancy and the Consultancy Staff. The Consultancy shall maintain such insurances for the duration of the Assignment and following termination of the Assignment for the period specified. The Consultancy shall make a copy of the policy available to the Payroll Business/Employment Business upon request;

15.1.3. be liable for any defects arising in relation to the Consultancy Services and shall rectify at its own cost such defects as may be capable of remedy within a reasonable period from notification of such defects by either the Payroll Business/Employment Business or the Client; and

15.1.4. for any breaches of the Data Protection Laws by the Consultancy or the Consultancy Staff.

#### 16. INDEMNITY

16.1. Save to the extent any such Losses result solely from any act or omission of the Payroll Business/Employment Business or the Client, the Consultancy shall indemnify and keep indemnified the Payroll Business/Employment Business against any Losses suffered or incurred by the Payroll Business/Employment Business by reason of any proceedings, claims or demands by any third party;

16.1.1 (including specifically, but without limitation, HM Revenue and Customs and any successor, equivalent or related body pursuant to the IR35 Legislation and/or any of the provisions of ITEPA or the NICs Legislation (and/or any supporting or consequential secondary legislation relating thereto)); or

16.1.2 arising out of any non-compliance with, and/or as a result of any breach of this Agreement or the Data Protection Laws by either the Consultancy or the Consultancy Staff.

#### **17. 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.

#### **18. NOTICES**

All notices which are required to be given in accordance with this Agreement shall be in writing and may be delivered personally or by first class prepaid post to the registered office of the party upon whom the notice is to be served or any other address that the party has notified the other party in writing, by email or facsimile transmission. Any such notice shall be deemed to have been served: if by hand when delivered, if by first class post 48 hours following posting and if by email or facsimile transmission, when that email or facsimile is sent.

#### **19. DISCLAIMER**

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

#### **20. THIRD PARTY RIGHTS**

20.1. Save as set out in clause 20.2, none of the provisions of this Agreement is intended to be for the benefit of or enforceable by third parties (other than permitted assignees who shall be entitled to enforce the provisions of this Agreement as if original parties to it) and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

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

#### **21. GOVERNING LAW AND JURISDICTION**

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

#### **22. SUBSTITUTION CLAUSE**

As a self-employed individual it is the Consultant Staff's obligation to provide a suitable substitute should they be unable to perform their contractual duties; should the Consultancy Staff be unable to provide this substitute the Payroll Business/Employment Business will assist as part of this contract for services.