

CONTRACT 10: AGREEMENT WITH A SELF-EMPLOYED CONSULTANCY WHO HAS OPTED OUT OF THE CONDUCT REGULATIONS (OUTSIDE IR35)

CONTRACT FOR SERVICES - IT IS AGREED AS FOLLOWS

1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms and Conditions of Business ("Terms") the following definitions apply:-

"Agency"	means the person firm or corporate body to whom the Company supplies the Services of the Contractor who is acting in the capacity of an Employment Business as defined by the Employment Agencies Act 1973.
"Assignment"	means the period of any engagement to supply Services to the Client
"Assignment Schedule"	means any Assignment Confirmation Note or Assignment Details whether agreed verbally or in writing.
"Authorised Representative"	means any person authorised by the Client to validate expense claims, timesheets and/or invoices for the Contractor's Services.
"CIS"	means the Construction Industry Scheme and all related legislation, guidelines, requirements and codes of practice as may be applicable from time to time.
"Client"	means any person firm or corporate body together with any subsidiary or associated company as defined by the Companies Act 2006 requiring the services of the Contractor.
"Company"	means Genius Payroll Limited (Company number 07439295) of 4 Old Park Lane, Mayfair, London, W1K 1QW
"Contract"	means these terms and conditions together with any Assignment Schedule attached hereto or agreed between the parties from time to time.
"Consultancy"	means the individual named within this contract who will perform the services on behalf of the Company and who is engaged as a self-employed subcontractor under a contract for services.
"Fee"	means the net fee payable in accordance with these terms which shall be payable by the Company to the Contractor in respect of the Services performed during the Assignment.
"Services"	means the particular services required by the Agency as notified to the Contractor by the Company from time to time.
"Force Majeure"	means fire, storm, tempest, inclement weather, war, hostilities, rebellion, insurrection, military or usurped power, civil war, labour lock-outs, strikes and other industrial disputes, riots, commotion, disorder, decree of Government, unforeseen or hidden physical features within or upon the premises or investigations by archaeologists; or any other cause or circumstance which prevents the due performance of the terms and provisions of this Contract and which is outside the control of the parties to this Contract.

1.2. The headings contained in these terms are for convenience only and do not affect their interpretation.

1.3. Unless the contract requires otherwise references to the singular include the plural and references to the masculine include the feminine and vice versa.

1.4. Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated and all statutory instruments or orders made pursuant to it.

1.5. References to Documents shall include original and copies of any written or diagrammatic material relating to the Assignment whether in hard copy or in electronic format.

2. THE CONTRACT

2.1. This Contract constitutes the terms agreed between the Company and the Contractor for the supply from time to time of the Contractor's Services to the Client and are deemed to be accepted by the Contractor by virtue of it commencing work on any Assignment.

2.2. This Contract replaces any other agreements or Contracts between the Company and Contractor in respect of any Assignment between the parties.

- 2.3. Where there is any conflict between this Contract and any terms upon which the Contractor purports to trade, the terms of this Contract shall prevail.
- 2.4. No variation or alteration of these terms shall be valid unless prior written approval is obtained from a Director of the Company and the Contractor.
- 2.5. This Contract may be transferred, sub-contracted, assigned or made over to a third party by the Company.
- 2.6. The Company has no obligation to offer future contracts to the Contractor and if it does make any such offer, the Contractor is not obliged to accept it.
- 2.7. Nothing in this Contract shall prohibit the Contractor from providing his services to any other person or organisation other than the Client or the Company during any Assignment (provided the provision of such services does not adversely affect the Contractor's obligation to provide Services under any Assignment) or following the completion or termination of the same.
- 2.8. The expiration or termination of this Contract, howsoever arising, shall not operate to affect any of the provisions contained in Clauses 4, 7, 8, 12, 13 and 17 which are hereby expressed to operate after such termination or expiration
- 2.9. At no point is it considered that the Contractor will be held to be an employee of the Company, Agency or Client and the Contractor confirms that it shall not bring any proceedings or make any claims based upon an employer/employee relationship.
- 2.10. The Contractor is self-employed and it is agreed that the provisions of clauses 4.9 and 18 (Working Time Regulations) shall apply.

3. ASSIGNMENT SCHEDULE

- 3.1. The Assignment Schedule is confirmation of the Contract. Details of the fee and duration of each Assignment will be detailed in the Assignment Schedule.
- 3.2. A separate Assignment Schedule will be issued for every Assignment. Each Assignment is a separate Contract made subject to these terms and conditions.

4. FEES

- 4.1. Subject to the provisions of clause 7.2(a), the Contractor will receive payment from the Company for an Assignment at the rate specified in the Assignment Schedule for each hour worked where appropriate less any fees, taxes and other deductions for which the Company is responsible under the provisions of this Contract or arising from any law or regulation and which the Contractor hereby authorises the Company to deduct.
- 4.2. The Company shall be entitled to factor its debts and to appoint third parties to assist in the factoring and/or recovery of any sums due to the Company from the Contractor under this Contract or any Assignment and the Company shall be entitled to recover and the Contractor shall indemnify and keep indemnified the Company in respect of all costs, fees and expenses incurred by or on behalf of the Company in taking such action.
- 4.3. The Company shall, subject to the provisions of clause 4.4 and 7.2(a) settle all approved invoices rendered by the Contractor relating to the provision of Services within 7 days of receipt of the same by the Company unless otherwise agreed.
- 4.4. Payment for the Services (which are not the subject of dispute) shall, subject to the terms of this Contract, be made by electronic transfer to the Contractor's bank account, details of which shall be provided to the Company and payment to which shall be a good discharge in respect thereof.
- 4.5. In respect of all electronic payments made by the Company under the terms of this Contract, it is the duty of the Contractor to provide the Company from time to time with up to date correct bank details and the Company shall not be liable for any loss arising from payments made to an account, where the Contractor has changed account and the Company has not received in good time prior written notification thereof.
- 4.6. The Contractor will not receive payment for any hours during which no Services are provided and will only receive payment for hours for which a valid timesheet signed by an Authorised Representative, and which has not subsequently been challenged by the Agency or Client, has been presented to the Company It is the responsibility of the contractor to also present authorised timesheets to the Agency.

- 4.7. Where any overpayment is made to the Contractor, either as a result of incorrect or erroneous information contained in a timesheet or otherwise arising, the Contractor shall immediately upon request by the Company, account to the Company in full for any such overpayment and the Company shall be entitled to set off amounts due to the Contractor under the Assignment or any other assignment in respect of any such sums overpaid.
- 4.8. Where the Company receives any repayment from the Contractor, the Company shall issue to the Contractor a credit note to the value repaid.
- 4.9. As the Contractor is engaged in business on its own account, the Contractor will not be entitled to and neither the Company nor the Client will be required to pay statutory sick pay, statutory paternity, statutory adoption, statutory maternity pay, redundancy pay or pension scheme to the Contractor.
- 4.10. Where applicable the Company shall be responsible for the deduction of and shall deduct any CIS tax from any payment made to the Contractor under this Contract.
- 4.11. The Contractor shall be responsible for any Income Tax and National Insurance Contributions and any other taxes and deductions required in respect of any payment received from the Company as appropriate and agree to indemnify the Company against any claims, costs, demands or penalties in respect of the same.
- 4.12. The Contractor shall be liable for and shall indemnify the Company on a full indemnity basis and shall keep it indemnified in respect of any liability or obligation and any related costs, penalties, expenses or other losses which the Company shall incur in the event that:
- A. Payment is made in accordance with clause 4.4 and the Company has not received notification from the Contractor in accordance with clause 4.5 in respect of a change to the account details to which payments have previously been made;
 - B. Any person (including the Contractor) should seek to establish any liability or obligation upon the Company on the grounds that they are an employee of the Company, Agency or Client;
 - C. The Company is held liable for any payment of Contractor's CIS Tax and which the Company has not already withheld payment from the Contractor; or
 - D. The Contractor has acted unlawfully, with gross negligence or where such liability or losses arise as a result of the Contractor acting outside of the scope of the Services.
 - E. The Contractor is, in the reasonable opinion of the Company, in breach of the provisions of clause 7.2(e)
- 4.13. Save in respect of death, personal injury or fraud, the Company's maximum liability arising under this Contract whether arising under any statute, in contract or tort, shall in respect of any claim or series of related claims not exceed £1,000,000 Sterling.
- 4.14. The Company shall, subject to clause 4.12 (d) and (e) indemnify and shall keep indemnified the Contractor for loss or damage arising directly as a result of the Contractor providing Services under an Assignment provided that any such claim is received by the Company where the Contractor performs the Services as an individual sole trader, within such time as is specified by statute.
- 4.15. For the avoidance of doubt, the Contractor shall be liable for any claim which, though the cause giving rise to such claim may have arisen during an Assignment, is received by the Company during a period during which the Contractor is not providing Services to the Company, save where the Contractor has reached a recognised retiring age (in respect of the Services provided) and has retired immediately following the provision of Services to the Company.

5. ASSIGNMENTS

- 5.1. The Contractor warrants that he/she has and shall retain throughout the term of this Contract the required level of skill and training necessary to perform the Services and is legally entitled to work at the location at which the Services are to be performed.
- 5.2. The Contractor warrants that he has and shall maintain throughout the term of the Contract the skills, qualifications, certifications, licenses and permits necessary to fulfil the Company's obligations with the Client.
- 5.3. Whilst the Contractor is not obliged to provide his Services for a minimum number of hours each day or week, the Contractor agrees to give precedence to this Assignment over other work undertaken to ensure, using its best endeavours that the Services are provided to the Client in a timely manner and milestone targets set by the Client are met.

- 5.4. The Services shall be performed at such location as the Client and Contractor may agree from time to time.
- 5.5. The Contractor shall have reasonable autonomy in relation to determining the method of performance of the Services but in doing so shall co-operate with the Client and comply with all reasonable and lawful instructions within the scope of the Assignment made by the Client.
- 5.6. The Contractor acknowledges that it will be necessary for the Company to provide third parties with Contractor information and records to enable such third parties to assess the Contractor's abilities and to request the Contractor to provide services through the Company and for other related matters. For the purpose of data protection legislation in force at the relevant time, the Contractor hereby authorises the Company to release the Contractor's confidential information (including that of its employees) to such third parties as the Company shall reasonably decide.

6. TIMESHEETS / SELF BILLING

- 6.1. The Contractor shall properly and accurately complete such timesheets as provided each day the Services are provided, detailing the number of hours worked.
- 6.2. At the end of each week of an Assignment (or at the end of the Assignment where an Assignment ends on a period of less than one week or is completed before the end of the first week) the Contractor shall deliver to the Agency the Agency's timesheet duly completed to indicate the number of hours worked by the Contractor during the preceding week and signed by an Authorised Representative of the Client. Such timesheets must be forwarded by the Contractor to the Agency within a mutually agreed time and in a form acceptable to the Company.
- 6.3. The Contractor agrees to the Company raising invoices on its behalf (self billing) and shall:
- A. upon the execution of this Agreement confirm to the Company in writing whether the Contractor is registered or unregistered for VAT purposes; and
 - B. where registered (or immediately upon the registration of, or upon any change to the VAT status or VAT registered number) notify the Company in writing of such change and upon request provide such details as the Company shall require; and
 - C. where there is any change in the status of the Contractor, its ownership or control to immediately notify the Company in writing of the change providing such details as the Company shall require.
- 6.4. The Company shall, save where there is a dispute as to time recordings in the time sheets referred to in clause 6.1, issue self billed invoices on behalf of the Contractor.
- 6.5. Invoices raised in accordance with this Clause 6 shall where applicable contain such details as shall be required from time to time to constitute a full and proper VAT invoice.

7. CONTRACTORS OBLIGATIONS

- 7.1. The Contractor shall not, in the provision of the Services, make use of or otherwise infringe the copyright, trademarks, patents or other intellectual property rights of any third party.
- 7.2. The Contractor agrees:
- A. to provide upon request all papers, documents and licences in a form acceptable to the Company, and which the Company shall from time to time require from the Contractor;
 - B. to take all reasonable steps to safeguard itself and any other person affected by the Contractor(s) actions on the Assignment;
 - C. to comply with any rules or obligations in force at the premises where the Services are being performed during Assignments;
 - D. to provide the Company with any progress reports which may be reasonably requested from time to time;
 - E. to immediately notify the Company in writing of any actual, threatened or suspected claims, litigation or other legal proceedings in relation to the provision of the Services and of which the Contractor becomes aware and take no steps or enter into any dialogue or correspondence in relation to the same without the prior written consent of the Company and shall at the request of the Company promptly take all such steps and provide such information as the Company may require to assist the Company in prosecuting or defending any such claim referred to;



- F. to immediately notify the Company if the Contractor becomes insolvent, dissolved, subject to a winding up petition or bankrupt, subject to a bankruptcy order, has a receiver appointed over his/her property, enter into or make a proposal to enter into any voluntary arrangement pursuant to the Insolvency Act 1986 or if the Contractor becomes aware of any actual or threatened litigation;
- G. to comply with all the requirements of the CIS legislation applicable to its CIS status;
- H. to notify the Company immediately upon revocation or suspension of its CIS Status;
- I. to inform the Company immediately upon receipt of information which gives the Contractor reasonable grounds to believe that any Contractor assigned to provide the Services under this Contract is unsuitable for any reason;
- J. not to engage in any conduct which would be detrimental to the interests of the Company, Client or Agency.
- K. to inform the Company immediately if there is any supervision, direction or control being demonstrated on assignment.
- L. to ensure all funds processed are declared in an end of year tax return and to ensure all NIC's are paid.

8. WARRANTIES AND INDEMNITIES FROM THE CONTRACTOR

- 8.1. The Contractor shall be liable for any loss, damage or injury to the Company resulting from the negligent acts or omissions of the Contractor during the Assignment.
- 8.2. The Contractor agrees to be responsible for rectifying any faulty work at its own cost, subject to the matter being referred to an independent arbiter.
- 8.3. Where the Company, the Agency or the Client are directly or indirectly the subject of a third party claim as a result of the Contractor being alleged to have used a third party's intellectual property rights (in breach of that party's rights) in the provision of the Services, the Contractor shall, at its own cost, provide such assistance in dealing with such claim as the Company, Agency or Client shall reasonably require and the Contractor hereby indemnifies and shall continue to indemnify, both during and following termination of this Contract, the Company, the Agency and the Client in respect of any such claims costs, damages and losses arising.
- 8.4. The Contractor shall indemnify and shall keep indemnified both during and following termination of this Contract the Company in respect of all claims, costs, damages and losses arising from the Contractor's failure to adhere to the terms of this Contract and from any breach of warranty or condition set out in this Contract.
- 8.5. If, in accordance with clause 10.3 below, the Contractor provides a suitably qualified substitute to perform the Services during this Assignment, the Contractor shall ensure that any such substitute has adequate Public Liability Insurance and Professional Indemnity Insurance and shall make a copy of such policies available to the Company, Agency or Client upon request.
- 8.6. Where a Client or Agency brings (or threatens to bring) any action or proceedings against the Contractor, the Contractor warrants that it shall not (without the Company's prior written consent) require the Company to join as a co-respondent nor shall it issue, or cause to be issued any proceedings against the Company in respect of any action which in accordance with clause 4 the Company provides no indemnity to the Contractor.

9. RESTRICTIONS

- 9.1. The Contractor shall deliver up to the Client or Company (as directed) at the end of the Assignment all Documents, materials and equipment belonging to the Client which is in its possession or control.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1. Either the Company or the Contractor may end the Assignment at any time upon giving the notice stated in the Assignment Schedule.
- 10.2. The Company may without notice and without liability instruct the Contractor to cease work on an Assignment at any time where:
 - A. The Contractor has acted in breach of the rules and regulations in operation at the Client's place of work;
 - B. The Client reasonably believes that the Contractor has not observed any condition of confidentiality applicable to the Contractor from time to time;



- C. The Client has requested the Contractor to leave the Client's place of work; or
- D. The Client has requested the Contractor to cease performing the Services for whatever reason.
- E. For any reason the Contractor proves to be unsatisfactory to the Client;
- F. the Contractor becomes insolvent, dissolved, subject to a winding up petition or bankrupt, is subject to a bankruptcy order, has a receiver appointed over his property, enters into or makes a proposal to enter into any voluntary arrangement pursuant to the Insolvency Act 1986.

10.3. If the Contractor is unable to perform the Services for any reason, the Contractor reserves the right to provide a suitably qualified substitute to continue with the performance of the Services. If a suitable substitute cannot be found then the Contractor should inform the Company as soon as is reasonably practicable and in any event within [48] hours of ceasing to provide the Services.

10.4. In the event that the Contractor cannot find a substitute and notice of the same has been given to the Company, the Company shall be entitled to immediately terminate the Assignment but such termination shall not affect the Contractor's right to receive all Fees due up to and including the date of termination of the Assignment.

10.5. The parties acknowledge that the continuation of an Assignment is subject to the continuation of the contract entered into between the Company and the Agency. In the event that the contract between the Company and the Agency is terminated for any reason then all Assignments will cease with immediate effect without liability to the Contractor.

10.6. The Company reserves the right to set off any amounts owed to the Company by the Contractor for which the Company would be liable including but not limited to instances where the Contractor fails to give adequate notice of termination as provided by this clause 10.

11. INTELLECTUAL PROPERTY RIGHTS

11.1. The Contractor acknowledges that all copyright, trademarks, patents and other intellectual property rights derived from the Services performed during the Assignment shall belong to the Client and the Contractor shall not make use of or otherwise disclose to any third party any information relating to any such right and shall indemnify and shall keep indemnified both during and following termination of the Contract:

- A. the Company in respect of all claims, costs, damages and losses arising from any such breach or alleged breach; and
- B. the Client in respect of any all claims, costs, damages and losses arising from the Contractor's failure to adhere to the provisions of this clause 11.1.

12. CONFIDENTIALITY

12.1. In order to protect any confidential information and trade secrets of the Client, and without prejudice to any other duty to keep secret all information provided during the Assignment or which is gained in confidence, the Contractor agrees:

- A. At any time whether during or after the Assignment not to disclose to any person or to make use of any trade secret or confidential information of the Client;
- B. not to make a 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 remain the property of the Client.

13. FORCE MAJEURE

13.1. If either party is affected by Force Majeure it shall promptly notify the other party of the nature and extent of the circumstances in question.

13.2. Notwithstanding any other provision of this Contract neither party shall be deemed to be in breach of its agreement or otherwise be liable to the other party for any delay in performance or the non-performance of any of its obligations under this Contract to the extent that the delay or non-performance is caused by the Force Majeure of which it has notified the other party, and where appropriate the time for performance of that obligation shall be extended accordingly.

14. THIRD PARTY RIGHTS

14.1. Save in respect of the provisions of clauses 8.3 and 11.1 a person who is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

15. PARTNERSHIP

15.1. Nothing in this Contract shall be deemed to create a partnership between the parties.

16. ENFORCEABILITY

16.1. If any provision of this Contract is agreed by the parties to be illegal, void or unenforceable under any law that is applicable or if any Court or other authority of competent jurisdiction in a final decision so determines, this Contract shall continue in force save that such provision shall be deemed to be excised here from with effect from the date of such agreement or decision or such earlier date as the parties may in writing agree.

17. ASSIGNMENT

17.1. The Company shall be entitled to assign its rights and obligations in whole or in part arising under this Contract.

18. STATUS UNDER THE CONDUCT OF EMPLOYMENT AGENCIES AND EMPLOYMENT BUSINESS REGULATIONS 2003 AND THE WORKING TIME REGULATIONS

18.1. By signing this Agreement, the Contractor confirms that the Assignments shall be carried out on the basis that the Contractor has, to the extent that they may apply, opted out of the Conduct of Employment Agencies and Employment Business Regulations 2003. The Contractor will be entitled to opt back into the Conduct of Employment Agencies and Employment Business Regulations 2003 by notifying the Company in writing of his intention to do so.

18.2. For the avoidance of doubt, the Contractor confirms that he/she has elected to be self-employed in accordance with the Construction Industry Scheme and under the terms detailed in this Contract. The Contractor recognises that the enhanced hourly rate offered under this Contract takes into account the fact that, as a self employed individual, the Contractor is not entitled to holiday pay or sickness benefits.

18.3. The Contractor therefore specifically confirms that he considers himself to be self-employed and, as such, is not a worker for the purposes of the right to paid holiday entitlement under the Working Time Regulation 1998.

19. CHOICE OF LAW

19.1. This Contract will be governed by and construed in accordance with English Law and shall, save where the parties agree to English arbitration, be subject to the exclusive jurisdiction of the English Courts.

20. SUBSTITUTION CLAUSE

20.1. As a self-employed individual it is the Contractor's obligation to provide a suitable substitute should they be unable to perform their contractual duties; should the contractor be unable to provide this substitute the Company will assist as part of this contract for services.

SIGNED FOR AND ON BEHALF OF
THE PAYROLL BUSINESS

PRINT NAME

Nikki Edyvane
Director of Genius Payroll Limited

SIGNATURE



DATE

SIGNED FOR AND ON BEHALF OF
THE CONTRACTOR

PRINT NAME

SIGNATURE

DATE

This Contract contains legally binding obligations. The Contractor is recommended to take appropriate legal or other professional advice prior to signing, and will be assumed to have done so. The Contractor confirms that he has read and understands the provisions of this Contract set out above.

THIS PAGE TO BE RETURNED TO GENIUS PAYROLL LIMITED
By email or in the pre-addressed envelope provided