

CLIENT TERMS OF BUSINESS FOR THE SUPPLY OF THE SERVICES OF A SELF-EMPLOYED LIMITED COMPANY CONTRACTOR

1. DEFINITIONS

1.1 In these Terms of Business the following definitions apply:-

- “Assignment”** means the period during which the Contractor is supplied by Astbury Marsden to render services to the Client;
- “Astbury Marsden”** means Astbury Marsden & Partners Limited of Augustine House, 6A Austin Friars, London EC2N 2HA, registered under company number 3318173, an employment business as defined by section 13(3) of the Employment Agencies Act 1973 (as amended)
- “Business Day”** means any day on which the banks in London are open for business and is not a Saturday, Sunday or a public holiday in England.
- “Change of Control”** means, in relation to a partnership or body corporate, the power of a person, LLP, firm or company to secure that the affairs of the partnership or body corporate are conducted in accordance with the wishes of that person, LLP, firm or company:
- (a) by means of the holding of shares, or the possession of voting power, in or in relation to that or any other partnership or body corporate; or
- (b) by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating that or any other partnership or body corporate, and a CHANGE OF CONTROL occurs if a person, firm, LLP or company which controls any body corporate ceases to do so or if another person acquires control of it.
- “Client”** means the 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;
- “Commencement Date”** means the date on which the Contractor acknowledges receipt and confirms acceptance of these terms and conditions by email, post or fax and which is duly received by Astbury Marsden.
- “Contractor”** means the limited company introduced to the Client by Astbury Marsden to carry out an Assignment (and save where otherwise indicated, includes any officer, employee or representative thereof and any third party to whom the provision of services to the Client, is assigned or sublet with the prior approval of the Client).
- “Engagement”** means the engagement, employment or use of the Contractor’s services or the services of any officer, employee or representative of the Contractor, 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 arrangement and “Engaged” and “Engages” shall be construed accordingly.
- “Introduction”** means (i) the Client’s interview of an officer, employee, or representative of the Contractor, in person or by telephone, following the Client’s instruction to Astbury Marsden to supply a Contractor or (ii) the passing to the Client of information which identifies a Contractor and which leads to an Engagement and “Introduced” or “Introduces” shall be construed accordingly.
- “the Regulations”** means the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

“Relevant Period” means either 14 weeks from the commencement of an Assignment, or 8 weeks from the last day of an Assignment, whichever date is the later. For the purposes of this definition, a new Assignment begins where there has been a break of 42 days since the end of the last Assignment, or there has been no previous Assignment.

“Remuneration” includes fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, and all other payments taxable, (and, where applicable, non-taxable) payable to or receivable by the Contractor for services rendered to or on behalf of the Client.

- 1.2 Unless the context otherwise requires, references to the singular include the plural.
- 1.3 The headings contained in these Terms are for convenience only and do not affect their interpretation.
- 1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendments, extension, or re-enactment and includes any subordinate legislation for the time being in force.
- 1.5 A reference to **writing** or **written** includes faxes but not emails except where a clause or definition specifies written communication by email.
- 1.6 Any words for the terms **including, include, in particular** or any similar expression should be construed as administrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.7 A reference to a **party** is a reference to a party to these Terms and reference to the **parties** is a reference to both of the parties to these Terms.

2. THE CONTRACT

- 2.1 These Terms constitute the contract between Astbury Marsden and the Client for the supply of the Contractor’s services and are accepted by the Client upon signature and return of the Terms by the Client to Astbury Marsden or, if the Client fails to sign and return the Terms, are deemed to be accepted by the Client upon the Introduction or the Engagement of a Contractor or the passing of any information about the Contractor to any third party following an Introduction.
- 2.2 These Terms contain the entire agreement between the parties, and unless otherwise agreed in writing by a director of Astbury Marsden, these Terms prevail over any terms of business or purchase conditions put forward by the Client.
- 2.3 The Client cannot amend or vary the terms of this Agreement without the prior written consent of Astbury Marsden. Astbury Marsden may vary or amend the terms of this Agreement from time to time. The details of any variation or amendment by Astbury Marsden shall be notified to the Contractor in writing as soon as reasonably practicable and such document shall state the date on or after which such varied terms shall apply.

3. INFORMATION TO BE PROVIDED BY CLIENT AND ASTBURY MARSDEN

- 3.1 When informing Astbury Marsden of a temporary recruitment requirement, the Client shall inform Astbury Marsden of: its full name and address; the nature of its business; the date on which it requires a Contractor to commence work; the likely duration of any Assignment; a description of the position which the Client seeks to fill (including location, hours of work, any risks to health and safety known to the Client) and the steps the Client has taken to prevent or control such risks; details of the experience, training, qualifications and any authorisations which the Client considers are necessary or which are required by law or by any professional body to allow a Contractor to work in the position that the Client seeks to fill; and details of any expenses payable to the Contractor.

- 3.2 When making an Introduction of a Contractor to the Client, Astbury Marsden shall inform the Client of the identity of the Contractor and the person to be supplied to do the work. Astbury Marsden shall confirm that the Contractor and the person to be supplied to do the work have the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment.
- 3.3 Where the information referred to in sub-clauses 3.2 is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third Business Day following such notification, save where the Contractor is being proposed for an Assignment in the same position as one in which the Contractor had previously been supplied within the previous five Business Days and such information has already been given to the Client by Astbury Marsden.
- 3.4 The Client shall provide Astbury Marsden with any information which it reasonably requires in order for Astbury Marsden to fulfil its obligations under the Agency Workers Regulations 2010.

4. CHARGES

- 4.1 The Client agrees to pay the charges of Astbury Marsden. The charges are calculated according to the number of hours or days (as agreed) worked by the Contractor (to the nearest quarter hour). The charges comprise mainly the Contractor's pay but also include Astbury Marsden's commission calculated as a percentage of the Contractor's pay, and any travel, hotel or other expenses as may have been agreed with the Client or, if there is no such agreement, such expenses as are reasonable. VAT, if applicable, is payable on the entirety of these charges.
- 4.2 The charges are invoiced to the Client on a weekly or monthly basis by agreement and are payable within 7 days. Astbury Marsden reserves the right to charge interest on any overdue amounts at the rate of 4% per annum above the base rate from time to time of Lloyds TSB Bank from the due date until the date of payment.
- 4.3 There are no refunds or rebates payable in respect of the charges of Astbury Marsden.

5. VERIFICATION OF EXECUTION OF THE SERVICES

- 5.1 At the end of each week of the Assignment (or at the end of the Assignment where the Assignment is for a period of less than one week or is completed or finished before the end of a week) the Client shall verify the execution of the services provided by the Contractor by signature of a form provided to the Contractor for this purpose.
- 5.2 Verification of the execution of the services by the Client constitutes acceptance that the Contractor's services have been provided satisfactorily and in accordance with these Terms. If the Client is unable to verify execution of the services provided by the Contractor because the Client disputes the hours claimed, the Client shall inform Astbury Marsden as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with Astbury Marsden to enable Astbury Marsden to establish what hours, if any, were worked by the Contractor. Failure to verify execution in writing does not affect the Client's obligation to pay the charges in respect of the work done.

6. REMUNERATION

- 6.1 Astbury Marsden is responsible for paying the Contractor's fees.

7. ENGAGEMENT FEES

- 7.1 Subject to clause 8 below, if the Client intends to enter into the Engagement of a Contractor supplied by Astbury Marsden either (1) directly by the Client or (2) by the Client pursuant to an

agreement with an alternative employment business, either after Introduction of the Contractor (but before commencement of an Assignment) or during an Assignment or within the Relevant Period then the Client shall notify Astbury Marsden of such intention and Astbury Marsden may require the Client to:

- 7.1.1 pay an engagement fee upon commencement of the Engagement equivalent to 30% of the Remuneration applicable during the first 12 months of the Engagement; or
- 7.1.2 pay an amount equal to all of the fees that would have been due to Astbury Marsden had the Contractor continued to provide services to the Client under these Terms until either the end of the Assignment or (if there is no Assignment) for a period of 12 months following the Client's notice; or
- 7.1.3 extend the existing Assignment of the Contractor, or if no Assignment has taken place or the Assignment has already ended, enter into a new extended period of hire of 12 months during which Astbury Marsden shall be entitled to the charges set out in clause 4.1 above for each hour or day (as the case may be) that the Contractor is supplied, and at the end of the extended period of hire, the Client may Engage the Contractor without payment of any further fee to Astbury Marsden.

The parties acknowledge that the engagement fee envisaged by this clause 7.1 is fair and reasonable compensation for the inconvenience and damage suffered by Astbury Marsden following the Engagement of the Contractor by the Client.

- 7.2 Astbury Marsden shall notify the Client of its option under clause 7.1 within 5 Business Days and if it has elected for the option set out in sub-clause 7.1.3, the extended period of hire shall begin on the date of receipt by Astbury Marsden of the Client's written notice. No refund or rebate of the engagement fee shall be paid in any event. VAT, if applicable, is payable in addition to any engagement fee due.
- 7.3 Subject to clause 8 below, if the Client Introduces the Contractor to a third party with whom the Contractor enters into an Engagement either (1) directly by the Client or (2) by the Client pursuant to an agreement with an alternative employment business, either after Introduction of the Contractor (but before commencement of an Assignment) or during an Assignment or within the Relevant Period the Client shall be liable to pay an engagement fee to Astbury Marsden as set out in clause 7.1.1 and 7.1.2. VAT, if applicable, is payable in addition to any fee due
- 7.4 Subject to clause 8 below, if the Engagement of the Contractor is for a fixed term of less than 12 months, the fee in clause 7.1 will apply pro-rata. If the Engagement is extended beyond the initial fixed term or if the Client re-engages the Contractor within 12 months of the termination of the first Engagement the Client shall be liable to pay a further fee based on the additional Remuneration applicable for the period of the subsequent Engagement following the initial fixed term up to the termination of the subsequent Engagement or the first anniversary of its commencement, whichever is sooner.

8. ENGAGEMENT FEES IN THE EVENT OF OPT OUT NOTIFICATION

- 8.1 If the Contractor serves an opt-out notice on Astbury Marsden, Astbury Marsden will notify the Client of this as soon as practicable. If the Contractor has opted out of the effects of the Regulations, clause 7 shall not apply and instead, the Client shall be liable to pay an engagement fee to Astbury Marsden in the following circumstances:
 - 8.1.1 If the Contractor is Engaged by the Client directly, or Engaged by the Client pursuant to an agreement with an alternative employment business, or Engaged by a third party to whom the Contractor has been Introduced by the Client; and
 - 8.1.2 such Engagement commences within 12 months of the termination of an Assignment or if there has been no Assignment, commences within 12 months of Introduction of

the Contractor.

8.2 If the requirements of clause 8.1 are satisfied, the Client shall be required to pay an engagement fee to Astbury Marsden upon commencement of the Engagement equivalent to:-

8.2.1 30% of the Remuneration applicable during the first 12 months of the Engagement;
or

8.2.2 an amount equal to all of the fees that would have been due to Astbury Marsden had the Contractor continued to provide services to the Client under these Terms until either the end of the Assignment or (if there is no Assignment) for a period of 12 months following the Introduction.

The parties acknowledge that the engagement fee envisaged by this clause 8.2 is fair and reasonable compensation for the inconvenience and damage suffered by Astbury Marsden following the Engagement of the Contractor. VAT, if applicable, is payable in addition to any engagement fee due.

8.3 In the event that the Engagement of the Contractor is for a fixed term of less than 12 months, the fee in clause 8.2 will apply pro-rata. If the Engagement is extended beyond the initial fixed term or if the Client or third party to whom the Contractor has been Introduced by the Client, re-engages the Contractor within 12 months of the termination of the first Engagement the Client shall be liable to pay a further fee based on the additional Remuneration applicable for the period of Engagement following the initial fixed term up to the termination of the second Engagement or the first anniversary of its commencement, whichever is sooner.

9. LIABILITY

9.1 Whilst every effort is made by Astbury Marsden to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from the Contractor and to provide the same in accordance with the Assignment details provided by the Client, no liability is accepted by Astbury Marsden for any loss, expense, damage, costs or delay arising from the failure to provide a Contractor for completion of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Contractor or if the Contractor terminates the Assignment for any reason. For the avoidance of doubt, Astbury Marsden does not exclude liability for death or personal injury arising from its own negligence.

9.2 For the avoidance of doubt, neither the Contractor, nor its officers, employees, representatives, assignees or subcontractors, are under the supervision or control of Astbury Marsden. The Client will comply in all respects with all relevant statutes, by-laws and legal requirements including provision of adequate Public Liability insurance in respect of the Contractor. Where the services are performed on the Client's premises the Client shall indemnify Astbury Marsden against any costs, claims, damages and expenses incurred by Astbury Marsden as a result of any breach of these Terms by the Client.

9.3 The Client undertakes that it knows of no reason why it would be detrimental to the interests of the Contractor for the Contractor to fill the Assignment.

10. SPECIAL SITUATIONS

10.1 Where the Contractor or the person supplied to do the work is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment or the Assignment involves caring for or attending one or more persons under the age of eighteen or any person who by reason of age, infirmity or who is otherwise in need of care or attention, Astbury Marsden will take all reasonably practicable steps to obtain and offer to provide copies of any relevant qualifications or authorisations of the Contractor or the person supplied to do the work, two references from persons not related to the Contractor or the person supplied to do the work who have agreed that the references they provide may be disclosed to the Client

and has taken all reasonably practicable steps to confirm that the Contractor or the person supplied to do the work is suitable for the Assignment. If Astbury Marsden is unable to do any of the above it shall inform the Client of the steps it has taken to obtain this information in any event.

11. COMMENCEMENT AND TERMINATION OF THE ASSIGNMENT

- 11.1 These Terms shall come into effect on the Commencement Date and shall continue until either party terminates these Terms giving no less than 7 days prior notice in writing to the other party.
- 11.2 Notwithstanding the provisions of sub-clause 11.1 the Client may terminate the Assignment forthwith by notice in writing to Astbury Marsden where:
- 11.2.1 the Contractor has acted in breach of any statutory or other reasonable rules and regulations applicable to them while performing the services;
 - 11.2.2 the Client reasonably believes that the Contractor has not observed any condition of confidentiality applicable to the Contractor from time to time; or
 - 11.2.3 for any reason the Contractor proves unsatisfactory to the Client.
- 11.3 Astbury Marsden may terminate an Assignment forthwith by notice in writing: -
- 11.3.1 if the Client is in wilful or persistent breach of its obligations under these Terms; or
 - 11.3.2 an order is made or a decision is passed for the winding-up of the Client or an order is made for the appointment of an administrator to manage the affairs, business and property of the Client, or such an administrator is appointed or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the Client or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the Client's assets or undertaking or circumstances arise which entitle to court or a creditor to appoint a receiver and/or manager or administrative receiver or it entitles the court to make a winding-up or bankruptcy order or the Client takes or suffers any similar or analogous action in consequence of debt.
 - 11.3.3 the Client undergoes a Change of Control.
- 11.4 Astbury Marsden shall notify the Client immediately if it receives or otherwise obtains information which gives it reasonable grounds to believe that a Contractor supplied to the Client is unsuitable for the Assignment and shall terminate the Assignment forthwith.

12. EFFECT OF TERMINATION

- 12.1 Any termination of these Terms however caused shall not affect:
- 12.1.1 any rights or liabilities which have accrued before the time of termination; or
 - 12.1.2 the continuance in force of any provision of these Terms which expressly or by implication is intended to come into or continue in force after termination.
- 12.2 Following termination of these Terms, all outstanding or unpaid fees which are due to Astbury Marsden shall be immediately payable by the Client.

13 DATA PROTECTION COMPLIANCE

13.1 To the extent that any data or information belonging to Astbury Marsden is personal data within the meaning of the Data Protection Act 1998 or equivalent legislation in the territory:

13.1.1 the Client will process such data and information only in accordance with Astbury Marsden's instructions;

13.1.2 the Client will not transmit such data and information to a country or territory outside the European Economic Area without Astbury Marsden's prior express written consent; and

13.1.3 the Client will take such technical and organisational measures against unauthorised or unlawful processing of such data and information and against accidental loss or destruction of, or damage to, such data and information as are appropriate to the Astbury Marsden as a data controller.

14 CONFIDENTIALITY

14.1 Neither party shall during and after termination of these Terms, without the prior written consent of the other party, use or disclose to any other person any information of the other party which is identified as confidential or which is confidential by its nature.

14.2 Each party shall on demand and on termination of these Terms surrender to the other all materials relating to such confidential information in its or its personnel's agent's or representatives' possession.

15 ANTI-BRIBERY COMPLIANCE

15.2 The Client shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

15.3 A breach of this clause by the Client shall be deemed a material breach of these Terms.

16 NON-SOLICITATION

The parties agree that neither of them will either on their own account or in partnership or association with any person, firm, company or organisation, or otherwise and whether directly or indirectly during, or for a period of 6 months from the end of the term of these Terms, solicit or entice away or attempt to entice away or authorise the taking of such action by any other person, any key executive of the other party who has worked on the services provided under these Terms at any time during the term of these Terms.

17 ASSIGNMENT

The Client shall not without the prior written consent of Astbury Marsden assign, transfer, mortgage or deal in any manner with these Terms or any of its rights and obligations under or arising out of these Terms.

18 FORCE MAJEURE

Either party may defer the date for performance of these Terms if it is prevented from, or delayed in, carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lockouts or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

19 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to these Terms shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

20 GOVERNING LAW AND JURISDICTION

20.1 These Terms and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

20.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Terms or its subject matter or formation (including non-contractual disputes or claims).

Signed:	
Date:	
Name:	
Authorised signatory for and on behalf of the Client	
Signed:	
Date:	
Name:	
Authorised signatory for and on behalf of Astbury Marsden & Partners Limited	