

Terms of Business for the Provision of Recruitment Services

SECTION ONE – GENERAL PROVISIONS

1. DEFINITIONS

- 1.1. In these Terms of Business (**Terms**) the following definitions apply:

Agency Worker: an agency worker within the meaning of the AWR including (i) a worker who is engaged directly by Us under a contract for services (ii) an individual who is employed by an umbrella company under a contract of service and (iii) a Representative of a Consultancy where the Assignment falls inside of IR35 under the Off Payroll Rules.

Assignment: the temporary role or project which a Temporary Resource may undertake for You.

Assignment Schedule: the document confirming details of an Assignment which is issued to You by Us.

AWR: the Agency Workers Regulations 2010.

Candidate: a person (including a legal person) who is Introduced by Us to You with a view to carrying out an Engagement or an Assignment. Unless otherwise indicated, a reference to a Candidate shall include a Temporary Resource.

Charges: means the charges made by Us for the supply of a Temporary Resource including the Temporary Resource's hourly or daily rate, Our commission and, where relevant, any Employer's National Insurance contributions, pension contributions, holiday pay and additional monies due under the AWR.

Conduct Regulations: the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

Connected Party: any (i) holding, subsidiary, associated or connected company of You (ii) third party which is demonstrably connected with You or (iii) third party in the same purchasing group or public sector group of organisations as You.

Consultancy: a limited company, LLP or partnership supplied by Us to perform Temporary Resource Services.

Data: personal data and special/sensitive personal data within the meaning of the Data Protection Legislation.

Data Protection Legislation: the Data Protection Act 2018, the UK-GDPR and all other applicable data privacy legislation in the United Kingdom.

Engagement: any engagement, employment, appointment, hire or use of the Candidate by You or any Connected Party on any basis, whether directly or indirectly through any third party and whether on a permanent, fixed term, temporary, consultancy, or any other basis, but excluding any hire of the Candidate through Us as a Temporary Resource.

Exempt Status: where You qualify as a small undertaking under the Off Payroll Rules or are otherwise exempt by being based wholly outside of the United Kingdom.

Extended Assignment: the extension of an Assignment for 26 weeks following expiry of Your notice under clause 21.5.

Intellectual Property: all copyright, trademarks, database rights, design rights, patents and other intellectual property of any type existing anywhere in the world, whether capable of registration or not, together with any registration rights in the same where applicable.

Introduction: (i) the provision by Us to You of a CV or other information which expressly or impliedly identifies a Candidate (ii) the arrangement by Us of an interview or meeting between You and a Candidate, whether face to face, by telephone, by web/video conference or by any other means or (iii) any discussion or negotiation between You and Us in respect of the potential engagement of a Candidate. **"Introduce," "Introduces" and "Introduced"** have the corresponding meanings.

Introduction Fee: the fee payable by You to Us upon the Engagement of a Candidate.

Introduction Period: the 12 month period from the most recent Introduction of a Candidate.

Off Payroll Rules: Chapters 8 and 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003.

Opted Out: opted out of the Conduct Regulations under Regulation 32(9). **"Opt Out"** has the corresponding meaning.

Party: You or Us as applicable. **"Parties"** shall mean both You and Us.

Payment Terms: 14 days from the date of Our invoice.

Recruitment Services: Our Introduction of Candidates and/or supply of Temporary Resources to You.

Refund Period: the 12 week period from commencement of a Candidate's Engagement.

Relevant Period: the later of (i) the period of eight weeks commencing on the day after the Temporary Resource last worked for You during an Assignment or (ii) the period of 14 weeks commencing on the first day on which the Temporary Resource worked for You during an Assignment but, in determining the first day on which the Temporary Resource worked for You, a prior Assignment shall be disregarded if more than 42 days have passed between Assignments.

Remuneration: (i) the gross annualised remuneration package payable to the Candidate or Temporary Resource in respect of an Engagement including, without limitation, basic salary, guaranteed and estimated bonuses and commission, allowances and all other taxable and non-taxable emoluments. £5,000 shall be added to the Remuneration in respect of any company vehicle which is provided or (ii) if the Candidate or Temporary Resource is Engaged on a self-employed or consultancy basis or via a personal services company or any third party person, company, firm or business, the total estimated annualised charges payable in respect of the Candidate's or Temporary Resource's services.

Representative: the director, officer, representative or subcontractor of a Consultancy who performs the Temporary Resource Services on behalf of the Consultancy.

Restricted Period: the six month period from the most recent Introduction of the Temporary Resource or six months from the end of the Assignment, whichever is later.

SDC: supervision, direction or control as to the manner in which the Temporary Resource Services are carried out.

Status Determination: a written assessment, in a format acceptable to Us, as to whether the Assignment falls inside or outside of IR35 under the Off Payroll Rules.

Subcontractor: a self-employed person engaged directly by Us or through a third party intermediary company, in either case under a contract for service.

Substitute: an alternative Representative, appointed by a Consultancy to perform the Services in the place of the original Representative.

Tax: income tax and National Insurance Contributions.

Temporary Resource: the person, firm or limited company supplied to You by Us which, unless otherwise indicated, includes a Consultancy, Representative, Subcontractor and Agency Worker.

Temporary Resource Services: the work to be carried out by the Temporary Resource during the course of an Assignment as described in the Assignment Schedule.

Third Party Engagement: the direct or indirect engagement or employment of a Candidate by a third party following a Third Party Introduction.

Third Party Introduction: the disclosure of a Candidate's details to any third party following an Introduction.

Transfer Fee: the fee payable by You upon the Engagement of a Temporary Resource.

We/Us: Girling Jones Limited (Registered in England & Wales No. 07492806) of Winslade House, Winslade Park Ave, Manor Drive, Clyst St Mary, Exeter EX5 1FY.

Work Product: any document, design, plan, schematic or deliverable which is designed, created, or produced by the Temporary Resource in the course of performing an Assignment.

You: the business, firm, partnership, organisation, public sector body or company to which Recruitment Services are provided by Us.

2. BASIS OF CONTRACT

- 2.1. These Terms are made up of three sections:

- 2.1.1. Section One sets out the general provisions which apply to all Recruitment Services;
- 2.1.2. Section Two relates to our Introduction of Candidates, including Temporary Resources; and
- 2.1.3. Section Three will apply if We agree to supply a Temporary Resource to You for an Assignment.

- 2.2. These Terms will be deemed to have been accepted upon You confirming Your agreement in writing, You instructing Us to source and introduce Candidates, You interviewing or meeting with a Candidate pursuant to an Introduction by Us, You using Us to facilitate an Engagement, or You instructing Us to supply a Temporary Resource, whichever occurs first after We issue these Terms.

- 2.3. These Terms set out the entire agreement between You and Us in relation to the Recruitment Services to the exclusion of any terms and conditions proposed by You.

- 2.4. No variation to these Terms will be valid unless the details of the variation are agreed by one of Our directors, are set out in writing and a copy of the varied terms is given to You stating the date on or after which such varied terms will apply.

- 2.5. For the purposes of the Conduct Regulations, We will act as (i) an employment agency when introducing Candidates to You for an Engagement and (ii) as an employment business when supplying a Temporary Resource to You.

3. INVOICING

- 3.1. We shall issue an invoice for:

- 3.1.1. An Introduction Fee or Transfer Fee on the first day of the Engagement or as soon as reasonably practicable afterwards;
- 3.1.2. The Charges at the end of each week of an Assignment; and
- 3.1.3. Any agreed marketing or other expenses at the time that they are incurred.

- 3.2. VAT shall be charged at the standard rate on all sums invoiced under these Terms.

- 3.3. You must settle Our invoices within the Payment Terms and without deduction or set off. Time for payment shall be of the essence.

- 3.4. If You do not pay Our invoice within the Payment Terms, We may:

- 3.4.1. Issue a further invoice where clause 12.4 is applicable;
- 3.4.2. Charge late payment compensation in respect of each overdue invoice under the Late Payment of Commercial Debts (Interest) Act 1998;
- 3.4.3. Charge interest on the invoiced sum of 8% per annum above the base rate of the Bank of England from the due date until the date of payment;
- 3.4.4. Refer the collection of such payment to our legal representatives, in which case You will be liable for all costs, fees (including legal fees on an indemnity basis), charges and disbursements incurred by Us in recovering payment from You;
- 3.4.5. Where applicable, suspend or terminate the supply of Temporary Resources.

4. LIABILITY & INDEMNITY

- 4.1. Whilst We will endeavour to ensure that any Candidate which We Introduce to You meets the requirements specified by You, We offer no warranty, whether express or implied, as to the ability, integrity or character of any Candidate.
- 4.2. We shall not be liable to You for any:
 - 4.2.1. Act or omission of any Candidate;
 - 4.2.2. Failure to Introduce a Candidate or non-availability of any Candidate;
 - 4.2.3. Performance or non-performance of Temporary Resource Services;
 - 4.2.4. Indirect or consequential losses; or
 - 4.2.5. Claim for loss of profit, business, reputation, or anticipated saving, howsoever arising.
- 4.3. Subject to clause 4.4, Our aggregate liability to You in respect of any claim or series of claims arising out of or in connection with these Terms and whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, is limited to a sum equivalent to:
 - 4.3.1. The Introduction Fee paid by You to Us in respect of the relevant Engagement; or
 - 4.3.2. 15% of the Charges paid by You in respect of the relevant Assignment in the three-month period immediately prior to such claim arising; or
 - 4.3.3. £25,000 in all other cases.
- 4.4. We do not limit or exclude our liability for death or personal injury arising from Our own negligence, for fraud or fraudulent misrepresentation or for any other claim which may not be limited or excluded by law.
- 4.5. Except as set out in these Terms, all warranties, conditions and other terms implied by statute or common law are excluded from these Terms to the fullest extent permitted by law.
- 4.6. Any claim which You may bring against Us in relation to these Terms must be commenced within 12 months of the date on which You become aware or should reasonably have become aware of such claim.
- 4.7. You shall indemnify Us against all losses, damages, costs, and fees (including legal fees on an indemnity basis) suffered or incurred by Us as a result of any claim (actual or threatened) which is brought by or on behalf of any Candidate where such claim is caused, in whole or in part, by any breach of contract, negligence (or other tortious act), or breach of legislation by You.

5. TERMINATION

- 5.1. Either Party may terminate Our provision of Recruitment Services at any time by notifying the other Party in writing.
- 5.2. Any provision of these Terms that expressly or by implication is intended to continue in force on or after termination of the Recruitment Services shall remain in full force and effect including, without limitation, the validity of any Introduction which was made by Us prior to such termination and, where applicable, our right to charge an Introduction Fee or Transfer Fee.

6. CONFIDENTIALITY & DATA PROTECTION

- 6.1. You shall treat all information relating to a Candidate which is provided by Us during the recruitment process as confidential and must not use such information for any other purpose without the prior consent of the Candidate and Us.
- 6.2. You acknowledge that, unless otherwise agreed between the Parties in writing, the Parties shall both act as independent data controllers in respect of any Data relating to a Candidate and each Party shall:
 - 6.2.1. Ensure that the Candidate is informed about how their Data is used through a fair processing notice which complies with the Data Protection Legislation;
 - 6.2.2. Take appropriate technical and organisational measures to safeguard the security of Data in its possession and control; and
 - 6.2.3. Co-operate with the other Party in relation to any regulatory enquiry or exercise by a Candidate of their rights in relation to Data.

7. NON-SOLICITATION

- 7.1. If You employ or engage (directly or indirectly) any of Our employees with whom You have had material dealings, within six months of such individual leaving Our employment, You shall pay a fee to Us, which shall be a sum equivalent to 25% of the employee's gross annualised remuneration in the last year of their service with Us. You shall not be entitled to any refund or rebate if the employment or engagement terminates for any reason.

8. GENERAL

- 8.1. You shall not assign any of Your rights or obligations under these Terms without Our written consent.
- 8.2. We may assign any monies owing from You to a third party including, without limitation, a recruitment finance or factoring company. They shall be entitled to enforce any provision of these Terms relating to the recovery of monies from You.
- 8.3. Subject to clause 8.2, the Parties do not intend these Terms to be enforceable by any third party.
- 8.4. The Terms shall be interpreted in accordance with English law and the Parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales in respect of any dispute or claim arising between the Parties in relation to the construction, interpretation or performance of the Terms.

SECTION TWO – INTRODUCTION & ENGAGEMENT OF CANDIDATES

9. INTRODUCTIONS

- 9.1. We will use reasonable endeavours to Introduce Candidates from time to time who (i) meet the criteria specified by You where applicable or (ii) We believe may otherwise be of interest or relevance to You.
- 9.2. An Introduction by Us will be deemed to be the effective cause of any Engagement of a Candidate within the Introduction Period, irrespective of whether the Candidate is engaged in the position for which the Candidate was originally Introduced, unless all of the following conditions apply:
 - 9.2.1. You had, in the six-month period prior to the Introduction, been in active discussions with the Candidate, directly or through a third party, with a view to engaging the Candidate in the same position;
 - 9.2.2. You provide evidence of such active discussions to Our reasonable satisfaction;
 - 9.2.3. You have not arranged an interview of the Candidate through Us;
 - 9.2.4. You have not used Our Introduction to facilitate the Engagement of the Candidate; and
 - 9.2.5. We have not supplied the Candidate to You as a Temporary Resource within the prior 12 month period.

10. PROVISION OF INFORMATION

- 10.1. You must provide all such information as We shall reasonably require regarding the position which You are seeking to fill including, without limitation, the information specified in Regulation 18 of the Conduct Regulations.
- 10.2. We may advertise the position which You are seeking to fill in such format and including such information about the position as We consider appropriate, unless You notify Us in writing that We may not advertise such position or otherwise specify the information about the position which We may not advertise.
- 10.3. You must:
 - 10.3.1. Notify Us immediately about any offer of Engagement which is made to a Candidate, providing the relevant terms of such offer;
 - 10.3.2. Notify Us immediately upon the Candidate accepting an offer of Engagement and in any event before the Engagement commences; and
 - 10.3.3. Provide Us with the details of the Remuneration agreed with the Candidate for the Engagement and, and if requested by Us, a copy of the Candidate's contract.

11. COMPLIANCE OBLIGATIONS

- 11.1. We will comply with Our legal obligations by carrying out the relevant checks and providing the information specified under the Conduct Regulations. If We have been unable to carry out a particular check in respect of a Candidate, We will inform You.
- 11.2. Notwithstanding Our obligations under the Conduct Regulations, You are exclusively responsible for deciding whether to Engage a Candidate. Before Engaging a Candidate, You must make such additional enquiries and carry out such additional checks as are necessary for You to satisfy Yourself that a Candidate meets Your requirements including, without limitation:
 - 11.2.1. Verifying the Candidate's work history;
 - 11.2.2. Taking references for the Candidate;
 - 11.2.3. Ensuring that the Candidate has the right to work in the relevant jurisdiction; and
 - 11.2.4. Checking any other qualifications, certifications, permissions, or requirements for the Candidate to be Engaged in the relevant position.
- 11.3. We are committed to equal opportunities. You must comply with all applicable anti-discrimination legislation in Your selection and treatment of Candidates and ensure that Your employees, subcontractors, and representatives do not unlawfully discriminate against, harass, or victimise any Candidate.

12. INTRODUCTION FEES

- 12.1. If We are the effective cause of an Engagement under clause 9.2, You will be liable to pay an Introduction Fee to Us.
- 12.2. **Subject to clauses 12.3 to 12.5, the Introduction Fee shall be an amount equivalent to 20% of the Candidate's Remuneration.**
- 12.3. If the actual amount of Remuneration is not known, if it is impracticable to calculate the Remuneration or if You fail to provide details of the Remuneration to Us, We will charge an Introduction Fee based on the level of Remuneration which, in Our reasonable opinion, is the market rate for the Engagement.
- 12.4. Any discount or reduction in the Introduction Fee which may be agreed between the Parties from time to time will be strictly subject to You complying with Your obligations under clauses 3.3 and 10.3.
- 12.5. If You notify Us prior to commencement of an Engagement that it shall be for a fixed term of less than 12 months (**Fixed Term Contract**), the Introduction Fee shall be charged on a pro-rata basis of one twelfth of the full Introduction Fee for each full or partial month of the Fixed Term Contract.
- 12.6. If a Fixed Term Contract is extended, or if the Candidate is Engaged again within 12 months of termination or expiry of the Fixed Term Contract, You shall pay the balance of the full Introduction Fee to Us.
- 12.7. If You make a Third Party Introduction which results in a Third Party Engagement within the Introduction Period, You shall notify Us without delay and shall be liable to pay an Introduction Fee which will be calculated in accordance with clause 12.2 or 12.3.

13. REFUND GUARANTEE

- 13.1. If a permanent Engagement terminates in the Refund Period, the Introduction Fee will be fully or partially refunded to You in accordance with the scale set out in clause 13.2 (**Refund**), provided that:
- 13.1.1. You paid the Introduction Fee within the Payment Terms;
 - 13.1.2. You notified Us in writing within 7 days of the termination of the Engagement, providing the reasons for such termination and, if requested by Us, reasonable evidence that the Engagement has terminated;
 - 13.1.3. The Candidate's position was not redundant or otherwise no longer required due to any internal reorganisation, restructure or change in strategy;
 - 13.1.4. The Candidate was not dismissed wrongfully or for reasons which were automatically unfair;
 - 13.1.5. The Engagement was not a Third Party Engagement or Fixed Term Contract;
 - 13.1.6. You strictly complied with clause 10.3 and did not materially breach any other provision of these Terms; and
 - 13.1.7. The Candidate had not been supplied to You by Us as a Temporary Resource within the prior 18 month period.
- 13.2. Subject to the conditions in clause 13.1, We will give a Refund to You in accordance with the following scale within 30 days of receiving notification from You in accordance with clause 13.1.2 above.
- | Week Candidate Leaves | % Refund |
|-----------------------|----------|
| 1-4 | 100% |
| 5-8 | 50% |
| 9-12 | 25% |
- 13.3. When determining the applicable Refund, the date of termination of the Engagement shall be the date on which the Candidate's Engagement actually terminates rather than the date upon which notice of termination (if any) is given, whether or not the Candidate works during their notice period.
- 13.4. If the same Candidate is Engaged again within 12 months of termination of the Engagement, an Introduction Fee shall become due and there shall be no entitlement to a Refund if the Candidate's Engagement then terminates.

SECTION THREE – SUPPLY OF TEMPORARY RESOURCES

14. PROVISION OF INFORMATION

- 14.1. Before We supply a Temporary Resource to You for an Assignment, You must inform Us of:
- 14.1.1. The information relating to the Assignment as specified in Regulation 18 of the Conduct Regulations;
 - 14.1.2. Whether the Temporary Resource requires a DBS disclosure or any other check or security clearance to carry out the Assignment;
 - 14.1.3. Any Health and Safety information which is relevant to the Assignment; and
 - 14.1.4. Any reason why it may be detrimental to the interests of the Temporary Resource to carry out the Assignment.
- 14.2. We shall issue an Assignment Schedule to You on commencement of the Assignment or otherwise within three business days of its commencement. If You consider any of the information within the Assignment Schedule to be incorrect, You must notify Us in writing as soon as practicable and in any event within three business days of receipt.
- 14.3. The Assignment Schedule shall form part of the agreement between the Parties in respect of the relevant Assignment and, in the event of any inconsistency between the documents, the Assignment Schedule shall take priority over these Terms.

15. YOUR ADDITIONAL OBLIGATIONS

- 15.1. You must:
- 15.1.1. Provide a safe working environment for the Temporary Resource;
 - 15.1.2. Comply with all statutory provisions, by-laws, codes of practice and other legal obligations in respect of the Temporary Resource's health and safety;
 - 15.1.3. Maintain records of any accident or injury affecting any Agency Worker or Representative and provide copies of such records to Us upon demand; and
 - 15.1.4. Ensure that the Temporary Resource is covered under Your own insurance policies or, in the case of a Consultancy operating outside of IR35 under the Off Payroll Rules, under insurance policies which are acceptable to You.
- 15.2. You must not request the supply of a Temporary Resource to perform the duties normally performed by (i) a worker who is taking part in official industrial action or (ii) a worker who has been transferred by You to perform the duties of a person taking part in official industrial action.
- 15.3. You must notify Us immediately if You intend to Engage a Temporary Resource, extend an Assignment or otherwise vary an Assignment in any way.
- 15.4. Subject to any right of substitution under clause 17.5.1, You must not engage or hire, directly or indirectly, any third party temporary worker or subcontractor through a Temporary Resource being supplied by Us without Our prior written consent.

16. SUPPLY OF AGENCY WORKERS

- 16.1. You shall be responsible for the supervision, direction, and control of an Agency Worker throughout their Assignment.
- 16.2. You shall not require an Agency Worker to provide Services for more than 48 hours per week on average unless We have confirmed that the Agency Worker has opted out of the 48 hour working week under the WTR.
- 16.3. You must comply with the AWR and assist Us in complying with the AWR by:
- 16.3.1. Notifying Us without delay if the Agency Worker has been supplied to You by any other employment business in the six-month period prior to commencement of the Assignment;
 - 16.3.2. Providing the Agency Worker with access to collective facilities and amenities and information about Your permanent employment opportunities;
 - 16.3.3. Providing written details of the relevant terms and conditions which apply to any actual or hypothetical comparator together with any amendments to such terms and conditions where appropriate;
 - 16.3.4. Co-operating with Us in responding to or assisting Us with responding to any question or complaint made under the AWR in a timely manner;
 - 16.3.5. Permitting a pregnant Agency Worker to attend ante-natal appointments, with pay, during working time after the 12-week qualifying period;
 - 16.3.6. Carrying out a risk assessment in respect of any pregnant Agency Worker and making such adjustments to the Assignment as are necessary to protect the Agency Worker's health and wellbeing or, where necessary, identifying a suitable alternative Assignment within Your organisation for the Agency Worker to perform; and
 - 16.3.7. Agreeing to a proportional increase in the Charges where necessary to ensure that the Agency Worker receives equal treatment in respect of all relevant terms and conditions after the 12-week qualifying period.
- 16.4. We shall be responsible for making all payments to the Agency Worker and shall ensure that (i) such payments comply with the National Minimum Wage or National Living Wage as applicable and (ii) income tax and National Insurance Contributions are deducted as required by law.
- 16.5. Save to the extent that We are required to disclose such information to the Temporary Resource, We shall keep confidential any information provided by You for the purpose of complying with the AWR and shall not use it for any other purpose.

17. SUPPLY OF CONSULTANCIES

- 17.1. If We propose the supply of a Consultancy for an Assignment, You must notify Us without delay if You have Exempt Status and are not required to provide a Status Determination under the Off Payroll Rules.
- 17.2. Unless You have Exempt Status, You must:
- 17.2.1. Provide a Status Determination to Us prior to commencement of the Assignment or as soon as possible thereafter;
 - 17.2.2. Ensure that any Status Determination provided to Us is accurate;
 - 17.2.3. Provide all such information as We may reasonably require, without delay, to justify or support Your Status Determination; and
 - 17.2.4. Respond to any query or appeal which We and/or the Consultancy raise in respect of the Status Determination within the 45 day period specified under the Off Payroll Rules.
- 17.3. If You provide a Status Determination stating that the Assignment is inside of IR35, We may (i) immediately terminate the Assignment if it has already commenced (ii) use reasonable endeavours to engage the relevant Temporary Resource on a different basis or (iii) use reasonable endeavours to supply an alternative Temporary Resource which is not a Consultancy.
- 17.4. If You gain or cease to have Exempt Status during the course of an Assignment, You must notify Us in writing and without delay.
- 17.5. Subject to clause 17.6, if We supply a Consultancy for an Assignment, You acknowledge and agree that:
- 17.5.1. The Consultancy may appoint a Substitute to perform the Temporary Resource Services from time to time provided that such Substitute is suitably skilled, qualified, security cleared (where applicable) and experienced;
 - 17.5.2. You will not attempt to move the Consultancy to a different task or project or otherwise materially vary the Assignment without first agreeing such move or variation with the Consultancy and Us;
 - 17.5.3. Subject to Your reasonable operational requirements and the specific nature of the Assignment, the Consultancy shall determine its own schedule when performing the Temporary Resource Services and the location in which such Temporary Resource Services are performed; and
 - 17.5.4. Neither You nor We nor any third party shall be entitled to exercise SDC over the Consultancy.
- 17.6. Clause 17.5 shall not apply if You have provided a Status Determination stating that the Consultancy is operating inside of IR35 under the Off Payroll Rules.
- 17.7. You shall indemnify and keep indemnified Us against any liability for Tax (including any interest and penalties) suffered or incurred by Us in relation to any Consultancy where You (i) provide an inaccurate Status Determination (ii) fail to provide a Status Determination where required to do so by law or (iii) otherwise fail to comply with this clause 17.

18. SUPPLY OF SUBCONTRACTORS

- 18.1. You must not exercise or permit any third party to exercise SDC over any Subcontractor. Nothing in this clause shall affect Your obligations under clause 15.1 or prevent You from periodically checking that the Temporary Resource Services have been performed to the required standard.
- 18.2. You acknowledge that a Subcontractor may engage and supply an alternative person to perform the Temporary Resource Services provided that person is suitably skilled, qualified, security cleared (where applicable) and experienced.
- 18.3. You shall indemnify and keep indemnified Us against any liability for Tax (including any interest and penalties) suffered or incurred by Us in relation to any Subcontractor where You have failed to comply with clause 18.1.

19. UNSATISFACTORY TEMPORARY RESOURCES

- 19.1. If You, acting reasonably, are dissatisfied with the Temporary Resource Services or the conduct of the Temporary Resource, You must notify Us without delay and may:
 - 19.1.1. Inform Us that You would like the Consultancy or Subcontractor, where applicable, to remedy any defects in the Temporary Resource Services; and/or
 - 19.1.2. Terminate the Assignment without notice.
- 19.2. If You require any Consultancy or Subcontractor to remedy defects in the Temporary Resource Services, We shall use reasonable endeavours to procure that the Consultancy or Subcontractor complies with Your request, but We shall not be liable for any refusal or failure of the Consultancy or Subcontractor to do so. In such event, You may have the benefit of third-party rights against the relevant Consultancy or Subcontractor and We shall provide details of such rights, if any, to You upon request.

20. TIMESHEETS

- 20.1. At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of one week or less), You shall approve a timesheet in a format specified by Us verifying the times worked by the Temporary Resource during that week.
- 20.2. You are responsible for ensuring that the times shown on the Temporary Resource's timesheet are correct and that only duly authorised employees approve the timesheet.
- 20.3. You acknowledge that We shall rely upon Your approval of the timesheet as confirmation of the time worked by the Temporary Resource when arranging to make payment to the Temporary Resource. You therefore must not retrospectively adjust the time which has been confirmed as having been worked by the Temporary Resource or subsequently refuse to pay any Charges in relation to an approved timesheet.
- 20.4. You may only refuse to approve the Temporary Resource's timesheet if:
 - 20.4.1. You dispute the time which the Temporary Resource claims to have worked. In this event, You shall inform Us without delay and co-operate with Us fully and in a timely manner to enable Us to establish the time, if any, which was worked by the Temporary Resource; or
 - 20.4.2. You, acting reasonably, are dissatisfied with the Temporary Resource Services and We have confirmed in writing that the Temporary Resource has Opted Out. In this event, You shall provide all such information as We may require in a timely manner to justify Your dissatisfaction with the Temporary Resource Services and co-operate with Us to agree the amount which is properly due in respect of the Temporary Resource Services which were performed.
- 20.5. Save as permitted under these Terms, if You refuse or fail to approve the Temporary Resource's timesheet, We may issue an invoice for the Charges which We reasonably estimate to be due in respect of the time worked by the Temporary Resource.
- 20.6. We shall be responsible for making all payments to the Temporary Resource for the Temporary Resource Services.

21. TRANSFER FEES & EXTENDED ASSIGNMENTS

- 21.1. Subject to clause 21.5, You shall pay a Transfer Fee if You or any Connected Party (i) Engage a Temporary Resource Introduced or supplied by Us or (ii) introduce the Temporary Resource to a third party which hires the Temporary Resource and:
 - 21.1.1. Where the Temporary Resource has not commenced an Assignment, such Engagement or hire commences during the Restricted Period.
 - 21.1.2. Where the Temporary Resource has commenced an Assignment and has not Opted Out, such Engagement or hire commences during the Assignment or within the Relevant Period; or
 - 21.1.3. Where the Temporary Resource has commenced an Assignment and has Opted Out, such Engagement or hire commences during the Assignment or within the Restricted Period.
- 21.2. **The Transfer Fee shall be a sum equivalent to 20% of the Temporary Resource's Remuneration for the Engagement.**
- 21.3. If the actual amount of Remuneration is not known, if it is impracticable to calculate the Remuneration or if You fail to provide details of the Remuneration to Us, the Transfer Fee shall be the hourly Charge at which the Temporary Resource was (or would have been) supplied to You multiplied by 350.
- 21.4. No refund of the Transfer Fee will be made if the Engagement or hire terminates for any reason.

- 21.5. Where the Temporary Resource has not Opted Out and provided that the relevant Engagement or hire has not already commenced, You may give one week's written notice to Us to commence an Extended Assignment, commencing on the date on which the written notice expires. Upon completion of the Extended Assignment, You shall not be liable to pay a Transfer Fee in respect of the relevant Temporary Resource.
- 21.6. During an Extended Assignment, We shall supply the Temporary Resource:
 - 21.6.1. On commercial terms no less favourable than those which applied immediately before We received the notice pursuant to clause 21.5; or
 - 21.6.2. Where We have not previously supplied the Temporary Resource to You, on such commercial terms as We may reasonably specify.
- 21.7. If We are unable to supply the Temporary Resource for any part of the Extended Assignment for a reason outside of Our control (including any adverse credit information or payment history which indicates that You will not pay the Charges within the Payment Terms) or if You do not wish to hire the Temporary Resource on the terms as set out in clause 21.6, You shall pay the Transfer Fee, reduced in proportion to any part of the Extended Assignment for which the Temporary Resource was supplied by Us following expiry of Your written notice under clause 21.5.

22. TERMINATION OF ASSIGNMENTS

- 22.1. Subject to clauses 19.1, 22.2 and 22.3 either Party may terminate an Assignment at any time by giving the notice specified in the Assignment Schedule or, if no period of notice is specified, at any time without notice.
- 22.2. Irrespective of any notice period specified in the Assignment Schedule, either Party may terminate an Assignment without notice if the other Party has committed a serious or persistent breach of its obligations under this Agreement, if the other Party undergoes a change of control, if the other Party becomes insolvent or if termination is otherwise expressly permitted under these Terms.
- 22.3. We may terminate an Assignment without notice if We become aware of any reason why the Temporary Resource is unsuitable to work in the Assignment.
- 22.4. We shall not be liable if the Temporary Resource fails to give the agreed notice, if any, upon terminating the Assignment.
- 22.5. Following termination of an Assignment, You shall be under no obligation or expectation to provide further work to the Temporary Resource and, if You do offer to provide further work, the Temporary Resource shall be under no obligation to accept such offer.

23. CHARGES

- 23.1. You shall pay the Charges as specified in the Assignment Schedule in accordance with clause 3.
- 23.2. We may, by giving written notice to You, vary the Charges to reflect any additional cost in supplying the Temporary Resource for any reason including, without limitation, compliance with the AWR and any change to the statutory charges and levies which We incur in paying the Temporary Resource.
- 23.3. No refund or rebate shall be available in respect of the Charges.
- 23.4. You shall not be entitled to deduct the CITB levy, where relevant, from the Charges.
- 23.5. As We operate as an employment business, the domestic VAT reverse charge shall not apply to any invoice which We issue for the Charges.

24. INTELLECTUAL PROPERTY & CONFIDENTIALITY

- 24.1. We shall use reasonable endeavours to ensure that the Temporary Resource:
 - 24.1.1. Assigns any Intellectual Property in the Work Product to You;
 - 24.1.2. Waives any moral rights in any copyright subsisting in the Work Product; and
 - 24.1.3. Enters into such supplementary agreements and warranties as You may request to protect Your Intellectual Property, confidentiality and Data.