



## TERMS OF BUSINESS

### 1. DEFINITIONS

1.1 In these terms of business ("Terms") the following definitions apply:

"Assignment" means the period during which the Operative is supplied to render services to the Client;

"AWR 2010" means the Agency Worker Regulations 2010 (SI 2010/93);

"Client" means the person, firm or corporate body together with any subsidiary or associated company as defined by the Companies Act 2006 to whom the Operative is supplied;

"Conduct Regulations 2003" means the Conduct of Employment Agencies and Employment Business Regulations 2003 (SI 2003/3319);

"The Employment Business" means Options Resourcing Ltd (with company number 7396728), Puma Contracting Limited (with company number 8703656) and/or any subsidiary or associated company (as defined by the Companies Act 2006) of Options Resourcing Ltd;

"Engagement" means any use of the Operative on a temporary basis, whether under any contract, agency, license, franchise or partnership arrangement; or any other engagement, but not such use as entails the Operative becoming an employee of the Client;

"Introduction" means the Client's interview of an Operative in person or by telephone following the Client's instruction to the Employment Business to search for an Operative or following the passing to the Client of a curriculum vitae or other information which identifies the Operative, and which leads in either case to an Engagement of that Operative by the Client;

"IR35 Legislation" means Sections 48 – 61X of the Income Tax (Earnings and Pensions) Act 2003 (as amended from 6 April 2021)

"Operative" means the person (including, where appropriate, a body corporate and any person that subsequently supplies services through a body corporate) whose services are supplied by the Employment Business to the Client;

"Written Confirmation" means a timesheet and/or such alternative physical record and/or electronic portal confirming the number of hours worked by an Operative.

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 these Terms are for convenience only and do not affect their interpretation.

1.4 The Employment Business acts as an employment business (as defined by the Conduct Regulations 2003).

1.5 These Terms shall apply as between the Client and the Employment Business in relation to each and every Operative engaged by the Client. In the event that the Terms set out herein are in conflict with other terms upon which the Client and the Employment Business have agreed for the engagement of an Operative, these Terms shall prevail.

### 2. THE CONTRACT

2.1 These Terms govern the supply of the Operative's services by the Employment Business to the Client and are deemed to be accepted by the Client by virtue of an Introduction to or the Engagement of the Operative.

2.2 No variation or alteration to these Terms shall be valid unless approved by a Director of the Employment Business in writing. Any such variation or alteration shall refer specifically to this clause.

2.3 Unless otherwise agreed in writing by a Director of the Employment Business, these Terms prevail over any terms of business or purchase conditions put forward by the Client, even

if such terms are put forward by the Client subsequent to these Terms being brought to the Client's attention.

2.4 The Employment Business will decline to accept any instructions to source Operatives where it believes that instruction amounts to unlawful discrimination.

### 3. CHARGES

3.1 The Client agrees to pay the charges of the Employment Business as notified at the commencement of the Assignment and as may be varied from time to time during the Assignment 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 is payable on the entirety of these charges.

3.2 The charges are invoiced to the Client on a weekly basis and are payable in full by the Client within 14 days of the date of invoice without abatement, set-off or deduction. The parties further agree that these Terms govern a contract to which the Late Payment of Commercial Debts (Interest) Act 1998 applies and that the Employment Business is entitled to interest thereunder on all sums due from the Client. In the event that the Client fails to make payment in full in accordance these Terms, the Client acknowledges that the Employment Business will be entitled to treat the failure to make payment as evidence of the Client's insolvency for the purpose of s123 of the Insolvency Act 1986, and to make demand and exercise all its other remedies in accordance with clause 10.4.

3.3 The Client acknowledges the importance to the Employment Business of cash flow considerations and that to ensure its continued operation the Employment Business remunerates the Operatives (including the Operative engaged by the Client under these Terms) by reference to the Written Confirmation. Accordingly, the following provisions shall apply;

3.3.1 Each and every Written Confirmation signed by an employee, officer or representative of the Client shall be conclusive evidence of the number of hours worked by the Operative and shall be conclusive evidence of the Client's satisfaction with the tasks for which the Operative was engaged during the said number of hours, the standard of his workmanship and the Operative's competence.

3.3.2 A certificate, signed by a director or company secretary of the Employment Business shall be conclusive evidence of the total sum due from the Client to the Employment Business in respect of the Operative in relation the Engagement as at the date of the said certificate.

3.4 Clause 3.3.2 shall be without prejudice to either parties' right to subsequently open up, review, revise or seek redetermination of the sum in fact due from the Client to the Employment Business in respect of the Engagement or Assignment (as the case may be) of the Operative by way of adjudication, arbitration, litigation or otherwise, save that it shall be a condition precedent to any such a reference or claim as initiated by the Client that it shall pay over in cleared funds the sum stated on the face of any certificate rendered by the Employment Business under clause 3.3.2 prior to such reference or claim.

### 4. TIME SHEETS / WRITTEN CONFIRMATION

4.1 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) the Client shall complete, sign and/or otherwise authorise a time sheet and/or Written Confirmation, which verifies the number of hours worked by the Operative during that week. The Client acknowledges that the Employment Business shall expressly rely upon such Written Confirmation (e.g. by paying Operatives

for all authorised hours) and understands the contractual nature of the same.

- 4.2 Communication by the Client of any Written Confirmation to the Employment Business in whichever form shall be conclusive evidence in all proceedings (including but not limited to litigation, adjudication and arbitration) of the Client's satisfaction with the services provided by the Operative and the number of hours worked. The Client expressly acknowledges that failure to physically sign any Written Confirmation that is in any way communicated to the Employment Business does not absolve the Client's obligation to pay the charges in respect of the hours stated to be worked.
- 4.3 Where the Client issues a Status Determination Statement under Section 61NA ITEPA 2003, the Client agrees to notify the Employment Business by sending a copy of the Status Determination Statement to IR35@optionsresourcing.com ("the Nominated Contact Point"). The Client accepts that unless notification and a copy of the Status Determination Statement is delivered to the Nominated Contact Point, the Client will not have given a Status Determination Statement to the Employment Business in accordance with Section 61N(8)(za) ITEPA 2003.
- 4.4 The Client agrees to provide the following information within 7 days of request by the Employment Business:
- 4.4.1 Whether or not any Status Determination Statements have been given to the Operative;
- 4.4.2 The dates on which any Status Determination Statements were given to the Operative;
- 4.4.3 Copies of any Status Determination Statements that were given to the Operative
- 4.5 If any party makes representations to the Client that the conclusion mentioned in any Status Determination Statement is incorrect, the Client agrees to notify the Employment Business within 7 days of receipt of such representations. The Client agrees to provide the Employment Business with a copy of any response to such representations, together with details of the date such representations were received, and the date of the response to such representations.
- 4.6 If HM Revenue & Customs notify the Client (whether verbally or in writing) that they intend to conduct any enquiries which may include matters relating to whether the IR35 Legislation applies to the Services, the Client agrees to notify the Employment Business without delay and in any case within 10 working days.
- 4.7 Where the IR35 Legislation applies to an Assignment and as a consequence the Employment Business is liable for Employer's Class 1 National Insurance and/or Apprenticeship Levy on a deemed direct payment to the Operative, the Employment Business shall be entitled to increase the charges under clause 3 payable for the services by an amount corresponding to the Employment Businesses' liability for Employer's Class 1 National Insurance Contributions and Apprenticeship Levy payable by the Employment Business in relation to the services.

## 5. ELECTRONIC SIGNATURES

In accordance with Section 7, Part II, of the Electronic Communications Act 2000, an electronic signature incorporated into or logically associated with these Terms is hereby certified by the Client to be a valid means of establishing the authenticity of the Client's authorised signature upon the same and, in respect of any Written Confirmation, confirms the Client's satisfaction with the services provided and the number of hours worked by the Operative.

## 6. REMUNERATION

The Employment Business assumes responsibility for payment of the Operative's remuneration (including where applicable any Holiday Pay under the Working Time Regulations 1998) and where appropriate, for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Operative. However, nothing in these Terms

shall make the Operative an employee of either the Client or the Employment Business.

## 7. INTRODUCTION FEES

- 7.1 This clause applies to the direct engagement by the Client of an Operative introduced by the Employment Business where such engagement takes place within 8 weeks of the end of the Assignment or 14 weeks after its commencement, whichever is the later. It also applies to the introduction by the Client of an Operative to any third party resulting in the engagement (or, where applicable, if the Operative has become incorporated under a limited company, the engagement of that limited company) by that third party, and to the Operative being supplied to the Client via another employment business in either case within the 4 weeks after the end of the Assignment.
- 7.2 In the circumstances described in clause 7.1 above, the Client may at its election either pay the Employment Business an introduction fee in accordance with clause 7.3 below or commit to engage the Operative as such for a further period in accordance with clause 7.4 below. Where following written notice by the Employment Business, the Client fails to make such election within 7 days following service of the said notice, the right of such election shall pass irrevocably to the Employment Business who may make such election by written notice.
- 7.3 The introduction fee will be calculated based on the remuneration then paid to the Operative, in accordance with the accompanying scale of fees for permanent engagements. Where the Client fails to inform the Employment Business of the remuneration, the introduction fee will be calculated by multiplying the hourly charge of the Employment Business for the Operative's services by 300. No rebate of the introduction fee will be paid in the event that the engagement subsequently terminates. VAT is payable in addition to any fee due.
- 7.4 Alternatively the Client may continue to use the services of the Operative on these Terms for a period of 26 weeks after which time the Client is entitled to engage the Operative directly and free of charge.
- 7.5 In circumstances where the Client has introduced an Operative to any third party resulting in the engagement of the Operative by that Third Party (either within 14 weeks of the start of the first assignment or within 8 weeks of the end of any assignment, whichever period ends later) the Employment Business is not obliged to offer the Client a choice between the transfer fee and an extended period of hire and can, at its absolute discretion, charge a transfer fee (in accordance with clause 7.3 above).
- 7.6 Such sums as become due under clause 7 may be the subject of a certificate issued by the Employment Business under clause 3.3.2 above.

## 8. SUITABILITY OF THE OPERATIVE AND THE LIABILITY OF THE EMPLOYMENT BUSINESS

- 8.1 The Client must supply to the Employment Business before any Introduction the following information in writing:-
- 8.1.1 the Client's identity and the nature of its business;
- 8.1.2 the date on which the Client requests an Operative to commence work, the duration or likely duration of the work and the length of any notice periods;
- 8.1.3 the position or services for which an Operative is sought, including the type of work the Operative would be required to do, the locations at which and the hours during which he would be required to do it, and any risks to the health or safety of the Operative known to the Client and the steps which the Client has taken to prevent or control such risks;
- 8.1.4 all principle information relating to any previous work, project or assignment undertaken by the Operative for the Client;
- 8.1.5 the experience, training, qualifications and any authorisations which the Client considers are necessary or required by law or any professional body

- for an Operative to possess in order to work in the relevant position or provide the services, and the abilities which the Client considers it is necessary for an Operative to possess in order to do so successfully;
- 8.1.6 any expenses payable by or to the successful Operative;
- 8.1.7 any information reasonably required by the Employment Business in order for the Employment Business to fulfil its obligations under the AWR 2010 and/or the Conduct Regulations 2003 and/or the Safeguarding Vulnerable Groups Act 2006.
- 8.2 Whilst reasonable effort is made by the Employment Business to ensure appropriate standards of skill, integrity and reliability from Operatives and further to provide them in accordance with the Client's booking details, the Employment Business is not liable for any loss, expense, damage, delay or disruption arising from any of the following;
- 8.2.1 provision of an Operative;
- 8.2.2 the failure to provide (or replace) any Operative for all or part of the period of the booking;
- 8.2.3 the negligence, dishonesty, misconduct or lack of skill of the Operative in the course of the Assignment;
- 8.2.4 any negligence or breach of duty on the part of the Employment Business in the selection of the Operative.
- 8.3 Nothing in clause 8.2 shall exclude the Employment Business' liability for death or personal injury arising from its own negligence.
- 8.4 The Client confirms that it is aware of any requirements imposed by law or any professional body which must be satisfied by it and/or the Operative to enable the Operative to supply services to the Client in the capacity requested.
- 8.5 Operatives are engaged by the Employment Business under contracts for services and are not employees of the Employment Business. The Client agrees to indemnify and hold the Employment Business harmless for all acts, errors or omissions of the Operative, whether willful, negligent or otherwise. The Client will also comply in all respects with all statutes including for the avoidance of doubt, the Health and Safety at Work Act 1974, the Working Time Regulations 1998, the Data Protection Act 1998, the AWR 2010 and all other by-laws, codes of practice and legal requirements to which the Client is ordinarily subject in respect of the Client's own staff, including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Operative during all Assignments. Where applicable, the Client will assist the Employment Business to comply with its duties under the Working Time Regulations 1998 and the AWR 2010 by supplying any relevant information about the Assignment which may reasonably be requested by it and the Client will not do anything to cause the Employment Business to be in breach of its obligations under these Regulations. Where the Client requests or may request the services of an Operative for more than 48 hours in any week, the Client must notify the Employment Business of this requirement before the commencement of that week.
- 8.6 The Client will take all practicable steps to ensure that no Operative is treated unfavourably by any person under its control on the grounds of the Operative's age, race, sex, disability, gender reassignment, marriage/civil partnership, religion/belief, pregnancy/maternity and/or sexual orientation.
- 8.7 Unless specifically informed in writing by the Employment Business that the Operative is not within scope, the Client will comply with the provisions of the AWR 2010. In particular the Client must ensure that the Operative is treated no less favourably than a comparable employee in relation to collective facilities and amenities and information in relation to any relevant vacant posts with the hirer.
- 8.8 Where so requested by the Employment Business the Client will comply with all requests for information to enable the Employment Business to comply with AWR 2010, and warrants that such information is complete and accurate. The Client shall indemnify and keep indemnified the Employment Business in respect of all liability resulting from inaccurate or incomplete information.
- 8.9 The Client shall indemnify and keep indemnified the Employment Business in respect of all claims by any third party caused by, or resulting from, or arising in connection with, the act, omission, default or negligence of the Operative, and shall further indemnify the Employment Business in respect of all costs, charges or damages in connection therewith, howsoever arising (including but not limited to such as arise under statute, common law, court order or notice by a government department or local authority or officer).
- 8.10 In the event that either party receives an allegation by any Operative that there has been a breach of the AWR 2010 in relation to the supply of that person to the Client by the Employment Business (whether that allegation has been made as a request for information under regulation 16 of the AWR 2010 or otherwise), it shall provide a copy of that allegation to the other party within seven days of receipt.
- 8.11 Operatives providing services to the Client may be engaged on terms under which neither the Client nor any other person has the right to supervise, direct or control the manner of the provision of their services. The Employment Business will notify the Client in writing and with specific reference to this clause 8.11 where this is the case. In such circumstances the manner of the Operative's work shall not be subject to (or to the right of) supervision, direction or control by any person and the Client hereby agrees to comply with this condition of supply. If there is any conflict between clause 8.11 and any other clause, whether within or extraneous to these terms of business, clause 8.11 will take precedence.
- 8.12 Operatives providing services to the Client may be engaged on terms under which the Operative is not obliged to provide services personally to the Client and is free to subcontract the provision of the services to any competent and qualified person, providing that the Operative has taken all necessary steps to ensure that the person providing the services has the requisite skills, experience, training, qualifications and authorisation by any professional body necessary to provide the services, and has the right to work lawfully in the UK. The Employment Business will notify the Client in writing and with specific reference to this clause 8.12 where this is the case.
- 8.13 These Terms do not oblige the Client to offer any Assignment or work under an Assignment to an Operative. Operatives are engaged under terms whereby Operatives are not obliged to provide any services, and the Client hereby accepts that an Operative is free to decline to provide any services at any time.
- 8.14 The Client warrants that all information provided to the Employment Business shall be, to the best of the Client's belief, accurate and complete.
- 9. ADVERTISING**
- In order to source suitable Operatives the Employment Business may advertise the positions the Client has instructed the Employment Business to fill or the services required by the Client.
- 10. TERMINATION**
- 10.1 The Client undertakes to ensure satisfaction with the Operative's standards of workmanship. If the Client reasonably considers that the services of the Operative are unsatisfactory, the Client may terminate the Assignment either by instructing the Operative to leave the Assignment immediately, or by directing the Employment Business to remove the Operative. The Employment Business may in such circumstances reduce or cancel the charges for the time worked by that Operative, provided that the Assignment terminates:-
- 10.1.1 within four hours of the Operative commencing the Assignment where the booking is for more than seven hours; or

- 10.1.2 within two hours for bookings of seven hours or less and also provided that notification of the unsuitability of the Operative and of the requirement to remove him is confirmed in writing to the Employment Business within 48 hours of the termination of the Assignment.
- 10.2 Any of the Client, the Employment Business or the Operative may terminate an Assignment at any time without prior notice and without liability save for sums accrued up to the point of such termination.
- 10.3 The Client shall notify the Employment Business immediately and without delay and in any event in writing within 24 hours if the Operative fails to attend work or notifies the Client direct that he is unable to attend work for any reason.
- 10.4 Upon the occurrence of any of:
- 10.4.1 any creditor of the Client petitioning for or obtaining a County Court Judgment Order against the Client or the Employment Business becomes aware that a creditor of the Client is petitioning for or has obtained a County Court Judgment Order against the Client;
- 10.4.2 the Employment Business receives notice from its credit insurers, or otherwise becomes aware, that:
- (a) the creditworthiness of the Client has been reduced to zero or there has been a reduction in the Client's credit limit, or
- (b) any other proceedings have been commenced against the Client for the recovery of debt by any creditor of the Client;
- (c) a winding up petition has been presented against the Client by any creditor;
- (d) there has been a reduction in the net worth of the Client.
- 10.4.3 the Client calls any meeting of its creditors to consider any arrangement or composition for the benefit of creditors (whether or not pursuant to the Insolvency Act 1986) or to pass a resolution for the winding up of the Client, or a notice of intention is given for the appointment of an administrator or an administrative receiver or receiver is appointed in respect of the Client or any part of its business or assets or the Client otherwise ceases to carry on its business;
- 10.4.4 the Client is considered to be insolvent under clause 3.2;

the Employment Business may, in addition to the provisions of clause 3.2, immediately, without notice, do any one or more of the following:

- (i) Demand payment in full by the Creditor of all sums due to the Employment Business in connection with the Assignment, any Engagement, the Operative or in respect of any and all other Operatives or other services supplied to the Client by the Employment Business whether or not an invoice in respect of such supply has previously been issued to the Client;
- (ii) Terminate the supply of any Operative or other services to the Client whether in connection with the Assignment or otherwise.

#### 11. LAW

These Terms are governed by the law of England and Wales and are subject to the exclusive jurisdiction of the Courts of England and Wales.

#### 12. VARIATION OF TERMS

In the event that the Employment Business and the Client agree to a variation of the Terms herein the Employment Business shall, as soon as is reasonably practicable, provide the Client with a document detailing the variation and stating the date on or after which it is agreed that the reviewed terms are to take effect.

#### 13. CONFIDENTIALITY AND DATA PROTECTION ACT

- 13.1 The client agrees that the Employment Business may make such enquiries and searches and obtain such references as it considers necessary from any person, firm or company including any credit reference agency (which will keep a record of any search made and will share that information with other businesses). The Employment Business may also make enquiries about the principal directors with a credit reference agency.
- 13.2 All information relating to an Operative is confidential and subject to the Data Protection laws and is provided solely for the purpose of providing work-finding services to the Client.
- 13.3 Information relating to the Employment Business' business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain, and should be destroyed or returned to the Employment Business upon termination of these Terms.

**The Employment Business and Client agree and give notice, pursuant to Regulation 32 of the Conduct for Employment Agencies and Businesses Regulations 2003 ('The Regulations'), that they do not wish the Regulations to apply.**

**The Client hereby consents to be bound by these Terms by either of the following means:**

- **By requesting and/or receiving the supply of labour or services from the Employment Business; and/or**
- **By physically signing these Terms where indicated below.**

**These Terms govern and are applicable to the supply of all labour or services by the Employment Business, without exception. In the event that you do not accept these Terms for any reason, please immediately contact the Employment Business and cease the continued placement and/or receipt of any labour/services. Your failure to do so will otherwise mean that you accept and continue to be bound by the Terms in respect of all current and future labour or services supplied by the Employment Business.**

Full Company Name and Company Registration Number:			
Signature: (Authorised Signatory)		Print Name:	
Position:		Date:	