

Agreement

Terms of Business with a Non UK Freelancer

THE PARTIES

(1) [Insert Candidate Name] of [Insert Address] (and save where otherwise indicated, includes any third party to whom the provision of Candidate services is assigned or sub-contracted with the prior approval of the Client) ("**the Candidate**").

(2) The Crewing Company Recruitment Limited (registered company no. 05847280) trading as The Crewing Company of Horsley Hale Farm, Horsley Hale, Littleport, Ely, Cambridgeshire, CB6 1ER ("**the Employment Business**").

RECITALS

(A) The Candidate carries on the business of the provision of Candidate services and has agreed to provide the services specified in the attached Assignment Details Form ("**the Assignment Details Form**") ("**the Candidate Services**").

(B) The Employment Business has requested the Candidate and the Candidate has agreed with the Employment Business, to supply the Candidate Services to the Client on the terms and subject to the terms of this Agreement.

It is agreed as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement the following definitions apply:

"Agency Workers Regulations" means the Agency Workers Regulations 2010;

"Assignment" means the Candidate Services to be performed by the Candidate for the Client for a period of time during which the Candidate is engaged by the Employment Business to provide the Candidate Services to the Client;

"Client" means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) requiring the Candidate Services and identified in the Assignment Details Form;

"Conduct Regulations" means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;

"Confidential Information" means any and all confidential commercial, financial, marketing, technical or other information or data of whatever nature relating to the Client or Employment Business or their business or affairs (including but not limited to this Agreement, data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information concerning the Assignment) in any form or medium whether disclosed or granted access to, whether in writing, orally or by any other means, provided to the Candidate or any third party in relation to the Assignment by the Client or the Employment Business or by a third party on behalf of the Client whether before or after the date of this Agreement together with any reproductions of such information in any form or medium or any part(s) of such information;

"Candidate Fees" means the fees set out in the Assignment Details Form. For the avoidance of doubt, the Candidate Fees include the agreed fees for the Candidate Services, any expenses or disbursements authorised by the Client and VAT charged at the applicable rate;

"Engagement" means the engagement, employment or use of the Candidate by the Client or by any third party to whom the Candidate has been introduced by the Client, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, an agency, license, franchise or partnership arrangement, or any other engagement; and "Engage", "Engages" and "Engaged" shall be construed accordingly;

"IR35 Legislation" means Chapter 8 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 and the Social Security Contributions (Intermediaries) Regulations 2000;

"Losses" means all losses, liabilities, damages, costs, expenses whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands; and "Loss" shall be construed accordingly

"Minimum Rate" means £x per hour being the minimum rate of pay that the Employment Business reasonably expects to achieve, for all hours worked by the Candidate;

"Period of Extended Hire" means any additional period that the Client wishes the Candidate to be supplied for beyond the duration of the original assignment or series of assignments as an alternative to paying a Transfer Fee;

"Relevant Period" means (a) the period of 8 weeks commencing on the day after the last day on which the Candidate worked for the Client having been supplied by the Employment Business; or (b) the period of 14 weeks commencing on the first day on which the Candidate worked for the Client having been supplied by Employment Business or 14 weeks from the first day of the most recent Assignment where there has been a break of more than 6 weeks (42 days) since any previous assignment; and

"Transfer Fee" means a fee payable by the Client to the Employment Business if the Client or any third party wishes to Engage the Candidate permitted under Regulation 10 of the Conduct Regulations.

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 the Agreement are for convenience only and do not affect their interpretation.

1.4. Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of this Agreement) and all subordinate legislation made (before or after this Agreement) under it from time to time.

2. THE CONTRACT

2.1. This Agreement together with the Assignment Details Form ("**the Agreement**") constitutes the entire agreement between the Employment Business and the Candidate and governs the Assignment undertaken by the Candidate with the Client. This Agreement shall prevail over any terms put forward by the Candidate.

2.2. The Candidate is engaged on a contract for services by the Employment Business on the terms set out in this Agreement. For the avoidance of doubt this Agreement shall not be construed as a contract of employment between the Candidate or any representative of the Candidate supplied to carry out the Assignment and either the Employment Business or the Client and any of the liabilities of an employer arising out of the Assignment shall be the liabilities of the Candidate.

2.3. No variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between the Employment Business and the Candidate and set out in writing and a copy of the varied Agreement is given to the Candidate no later than 5 business days following the day on which the variation was made stating the date on or after which such varied Agreement shall apply.

2.4. The Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973) when introducing or supplying the Candidate for Assignments with its Clients.

3. RELATIONSHIP BETWEEN THE EMPLOYMENT BUSINESS AND THE CANDIDATE AND BETWEEN THE CLIENT AND THE CANDIDATE

- 3.1. The Employment Business is not obliged to offer Assignments to the Candidate and the Candidate is not obliged to accept any Assignment. Both parties acknowledge that there is no intention to create mutuality of obligation during any Assignment or between Assignments.
- 3.2. The Candidate acknowledges to the Employment Business that its services are supplied to the Employment Business as an independent contractor and that accordingly the responsibility of complying with all statutory and legal requirements relating to the Candidate (including the payment of taxation and compliance with the immigration laws applicable to the jurisdiction in which the Candidate Services are provided) shall fall upon and be discharged wholly and exclusively by the Candidate.
- 3.3. Nothing in this Agreement shall render the Candidate an employee or worker of either the Employment Business or the Client. The Candidate shall ensure that s/he does not hold themselves out as an employee or worker of either the Employment Business or the Client. In the event that any person should seek to establish any liability or obligation upon the Employment Business on the grounds that the Candidate is an employee or worker of the Employment Business or the Client, the Candidate shall upon demand indemnify the Employment Business and keep it indemnified in respect of any such liability or obligation and any related Losses which the Employment Business or Client shall incur.
- 3.4. The Candidate acknowledges that s/he is not an agency worker as defined under the Agency Workers Regulations and that the Agency Workers Regulations do not apply in relation to this Agreement or any Assignment under this Agreement. The Candidate shall indemnify and keep indemnified the Employment Business (or, as the case may be, the Client) against any Losses the Employment Business (or the Client) may suffer or incur as a result of any claim made by or on behalf of the Candidate under the Agency Workers Regulations.
- 3.5. If before or during an Assignment or during the Relevant Period, the Client wishes to Engage the Candidate directly or through another employment business, the Candidate acknowledges that the Employment Business will be entitled either to charge the Client a Transfer Fee or to agree to a Period of Extended Hire with the Client at the end of which the Candidate may be Engaged directly by the Client or through another employment business without further charge to the Client. In addition the Employment Business will be entitled to charge a Transfer Fee to the Client if the Client introduces the Candidate to a third party (other than another employment business) who subsequently Engages the Candidate before or during an Assignment or within the Relevant Period.
- 3.6. The Candidate shall provide the Candidate Services and subject to the prior written approval of the Client (which will not be unreasonably withheld or delayed) shall be entitled to assign or sub-contract the performance of the Candidate Services provided that the Employment Business and the Client are reasonably satisfied that the assignee or sub-contractor has the required skills, qualifications, resources and personnel to provide the Candidate Services to the required standard and that the terms of any such assignment or sub-contract contain the same acknowledgements under and obligations imposed by this Agreement.
- 3.7. Save as otherwise stated in this Agreement, the Candidate shall be entitled to supply its services to any third party during the term of this Agreement provided that this in no way conflicts with or is to the detriment of the supply of its services to the Client or amounts to a breach of this Agreement.
- 3.8. The Candidate shall be permitted to determine how it will provide the Candidate Services and, subject to complying with any reasonable operational requirements of the Client, will have the flexibility to determine the number of hours required to provide, and the times during which it will provide, the Candidate Services. The Candidate will be at liberty to determine the location at which the Candidate Services will be provided, but where the Candidate Services are undertaken at the Client's site, the Candidate will comply with any reasonable requirements relating to working hours, and any other operational requirements in relation to that site.

4. WARRANTIES PROVIDED BY THE CANDIDATE

- 4.1. The Candidate warrants to the Employment Business that:
- 4.1.1. by entering into and performing its obligations under this Agreement it will not thereby be in breach of any obligation which it owes to any third party;
- 4.1.2. the Candidate has the necessary skills and qualifications to perform the Candidate Services;
- 4.1.3. the Candidate providing the Candidate Services has not opted out of the Conduct Regulations and that any person to whom the performance of the Candidate Services are assigned or sub-contracted has not opted out of the Conduct Regulations; and
- 4.1.4. the Candidate is not a "managed service company" as defined in section 61B of the Income Tax (Earnings and Pensions) Act 2003 but that it is a personal service company which is compliant in all respects with the IR35 Legislation.
- 4.2. The Candidate shall procure that the Candidate, any sub-contractor or assignee performing the Candidate Services warrant that they are not and do not operate as "managed service companies" as defined in section 61B of the Income Tax (Earnings and Pensions) Act 2003 but that they are personal service companies which are compliant in all respects with the IR35 Legislation.
- 4.3. The Candidate warrants to the Employment Business that they have consented in writing to the Employment Business, any other intermediary involved in supplying the services of the Candidate to the Client (now or in the future) and to the Client:
- 4.3.1. processing the Candidate's personal data for purposes connected with the provision of the Candidate Services and pursuant to this Agreement; and
- 4.3.2. exporting and/or processing the Candidate's personal data in jurisdictions outside the European Economic Area for purposes connected with the performance of this Agreement.

5. OBLIGATIONS OF THE CANDIDATE

- 5.1. The Candidate agrees on its own part as follows:
- 5.1.1. to observe any relevant rules and regulations of the Client's establishment or the premises where the Candidate Services are being performed to which attention has been drawn or which the Candidate might reasonably be expected to ascertain; including but not limited to those relating to health and safety to the extent that they are reasonably applicable to the Candidate;
- 5.1.2. to take all reasonable steps to safeguard its own safety and the safety of any other person who may be affected by actions of the Candidate whilst on the Assignment;
- 5.1.3. to comply with the Data Protection Act 1998 in respect of any personal data which the Candidate is granted access to for the purpose of or by reason of the performance of the Candidate Services;
- 5.1.4. not at any time to divulge to any person, nor use for its own or any other person's benefit, any Confidential Information relating to the Client's or the Employment Business' employees, business affairs, transactions or finances;
- 5.1.5. not to engage in any conduct detrimental to the interests of the Employment Business and/or the Client which includes any conduct which could bring the Employment Business and/or the Client into disrepute and/or which results in the loss of custom or business for the Employment Business and/or the Client;
- 5.1.6. not to commit any act or omission constituting unlawful discrimination against or harassment of any member of the Employment Business' or the Client's staff;
- 5.1.7. not to sub-contract or assign to any third party any of the Candidate Services which it is required to perform under the Assignment except in accordance with clause 3.6;
- 5.1.8. to furnish the Client and/or the Employment Business with any progress reports as may be requested from time to time;
- 5.1.9. to notify the Employment Business forthwith in writing if it should become insolvent or if any of the circumstances set out in clauses 9.2.5 to 9.2.7 apply;
- 5.1.10. to comply with all the requirements of VAT legislation and the Companies Acts;
- 5.1.11. to comply with all relevant legal obligations, including but not limited to statutory obligations; and
- 5.1.12. to provide at its own cost, subject to any agreement to the contrary specified in the Assignment Details Form all such necessary equipment as is reasonable for the adequate performance by the Candidate of the Candidate Services.

5.2. If the Candidate is unable for any reason to provide the Candidate Services during the course of the Assignment, the Candidate should inform the Employment Business as soon as is reasonably practicable but in any event, no later than 1 hour after it becomes aware of any event which renders it unable to provide the Candidate Services so as to enable the Employment Business to discharge its obligations to the Client.

5.3. If, either before or during the course of an Assignment, the Candidate becomes aware of any reason why s/he may not be suitable for an Assignment, the Candidate shall notify the Employment Business without delay.

5.4. The Candidate acknowledges that any breach of its obligations set out in this clause may cause the Employment Business to suffer Loss and that the Employment Business reserves the right to recover such Losses from the Candidate.

6. OBLIGATIONS OF THE EMPLOYMENT BUSINESS

6.1. Throughout the term of this Agreement the Employment Business shall pay the Candidate the agreed fee in accordance with clause 8.1 below.

6.2. The Employment Business shall provide the Candidate with the following information:

6.2.1. the identity of the Client, and if applicable the nature of their business;

6.2.2. the date the Assignment is to commence and the duration or likely duration of the work;

6.2.3. the type of work, location and hours during which the Candidate would be required to work;

6.2.4. the Minimum Rate that will be paid and any expenses payable by or to the Candidate;

6.2.5. any risks to health and safety known to the Client and the steps the Client has taken to prevent or control such risks; and

6.2.6. what experience, training, qualifications and any authorisation required by law or a professional body the Client considers necessary or which are required by law to work in the Assignment.

6.3. Where such information 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 (excluding Saturday, Sunday and any Public or Bank Holiday) following save where:

6.3.1. the Candidate is being offered an Assignment in the same position as one in which the Candidate had previously been supplied within the previous 5 business days and remains unchanged and such information has already been given to the Candidate; or

6.3.2. subject to clause 6.4, the Assignment is intended to last for 5 consecutive business days or less and such information has previously been given to the Candidate before and remains unchanged, the Employment Business needs only to provide written confirmation of the identity of the Client and the likely duration of the Assignment.

6.4. Where the provisions of clause 6.3.2 are met but the Assignment extends beyond the intended 5 consecutive business day period, the Employment Business shall provide such information set out in clause 6.2 to the Candidate in paper or electronic form within 8 days of the start of the Assignment.

7. INVOICING

7.1. Upon completion of the Assignment or as may be agreed and specified in the Assignment Details Form attached at the end of each week of the Assignment the Candidate shall deliver to the Employment Business its invoice for the amount due from the Employment Business to the Candidate giving a detailed breakdown showing the work performed and the time spent by the Candidate in providing the Candidate Services.

7.2. The Candidate shall obtain the signature of an authorised representative of the Client as verification of execution of the provision of the Candidate Services for each of its invoices.

7.3. The Candidate's invoice should be received by the Employment Business by no later than 12pm on Monday following the week to which it relates. The Candidate's invoice should bear the Candidate's name, the Candidate's company registration number and VAT number and should state any VAT due on the invoiced sum.

7.4. Subject to the Candidate complying with the provisions of this clause 7 the Employment Business shall pay the Candidate for all hours worked regardless of whether the Employment Business has received payment from the Client for those hours.

7.5. Where the Candidate fails to submit a properly completed verification of execution of the assignment the Employment Business shall, in a timely fashion, conduct further investigations into the hours claimed by the Candidate and the reasons that the Candidate has failed to produce such verification. This may delay any payment due to the Candidate.

7.6. The Employment Business shall make no payment to the Candidate for work not carried out.

8. CANDIDATE FEES

8.1. Subject to the receipt of the Candidate's invoice in accordance with clause 7 above, the Employment Business will pay the Candidate Fees within 21 days of receipt of the Candidate's invoice, or upon receipt of funds from the Client, whichever is the sooner. The Employment Business shall pay to the Candidate the Candidate Fees for the Candidate Services performed during the Assignment. The actual rate of pay shall be agreed prior to the commencement of the Assignment and specified in the Assignment Details Form.

8.2. The Candidate Fees shall be agreed prior to the commencement of the Assignment and specified in the Assignment Details Form.

8.3. The Candidate shall be responsible for any PAYE Income Tax and National Insurance Contributions and any other taxes and deductions payable for the provision of the Candidate Services.

8.4. The Employment Business will pay the Candidate Fees to the Candidate and not to any third party or any sub-contractor or assignee.

8.5. The Employment Business shall not be obliged to pay the Candidate for any periods during which the Candidate Services are not provided, whether this is due to the Candidate being unable to provide the Candidate Services or where the Client does not require the Candidate Services or otherwise in respect of holidays, illness or absence of the Candidate.

8.6. The Candidate shall bear the cost of any training which the s/he may require in order to perform the Candidate Services.

9. TERM AND TERMINATION

9.1. This Agreement shall commence on the date set out in the Assignment Details Form and shall continue until completion of the Candidate Services to the reasonable satisfaction of the Client at which time this Agreement shall expire automatically unless previously terminated by the Employment Business or the Candidate giving the other party the period of notice specified in the Assignment Details Form.

9.2. Notwithstanding clauses 9.1 and 9.3 of this Agreement, the Employment Business may without notice and without liability instruct the Candidate to cease work on the Assignment at any time, where:

9.2.1. the Candidate has acted in breach of the rules and regulations applicable to third parties providing services to the Client; or

9.2.2. the Candidate has committed any serious or persistent breach of any of its obligations under this Agreement; or

9.2.3. the Client reasonably believes that the Candidate has not observed any condition of confidentiality applicable to the Candidate from time to time; or

9.2.4. the Client is dissatisfied with the Candidate's provision of the Candidate Services and has terminated the Assignment; or

9.2.5. either the Client or the Candidate is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; or

9.2.6. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of either the Client or the Candidate; or

9.2.7. an order is made for the winding up of either the Client or the Candidate, or where either the Client or the Candidate passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation or amalgamation where the resulting entity will assume all the obligations of the other party under this Agreement); or

9.2.8. the Candidate is suspected of any fraud, dishonesty or serious misconduct; or

9.2.9. the Candidate is unable to perform the Candidate Services for 2 days or more.

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

9.4. Failure by the Candidate to give notice of termination as required in the Assignment Details Form shall constitute a breach of contract and shall entitle the Employment Business to claim damages from the Candidate for any resulting Losses suffered by the Employment Business.

10. INTELLECTUAL PROPERTY RIGHTS

The Candidate acknowledges that all copyright, trademarks, patents and other intellectual property rights deriving from the Candidate Services carried out by the Candidate and any third party to whom this Agreement is assigned or sub-contracted for the Client during the Assignment shall belong to the Client, save such rights as may be expressly owned or retained by the Candidate and set out in the Assignment Details Form. Accordingly the Candidate shall execute all such documents and do all such acts as the Employment Business shall from time to time require in order to give effect to its rights pursuant to this clause.

11. CONFIDENTIALITY

11.1. In order to protect the confidentiality and trade secrets of any Client and/or of the Employment Business without prejudice to every other duty to keep secret all information given to it or gained in confidence the Candidate agrees as follows:

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

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

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

12. COMPUTER EQUIPMENT WARRANTY

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

13. LIABILITY

13.1. The Candidate shall:

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

13.1.2. ensure the provision of adequate Employer's Liability Insurance, Public Liability Insurance, Professional Indemnity Insurance and any other suitable policies of insurance in respect of the Candidate during an Assignment and shall make a copy of the policy available to the Employment Business upon request;

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

14. INDEMNITY

The Candidate shall indemnify and keep indemnified the Employment Business against any Losses suffered or incurred by the Employment Business by reason of any proceedings, claims or demands by any third party (including specifically, but without limitation, Her Majesty's Revenue and Customs and any successor, equivalent or related body pursuant to the IR35 Legislation and/or any of the provisions of Chapter 9 and/or section 688A of the Income Tax (Earnings and Pensions) Act 2003 and/or any supporting or consequential secondary legislation relating thereto).

15. SEVERABILITY

If any of the provisions of this Agreement shall be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the remaining terms, which shall continue to be valid to the fullest extent permitted by applicable laws.

16. NOTICES

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

17. DISCLAIMER

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

18. THIRD PARTY RIGHTS

18.1. Save as set out in clause 18.2, none of the provisions of this Agreement is intended to be for the benefit of or enforceable by third parties (other than permitted assignees who shall be entitled to enforce the provisions of this Agreement as if original parties to it) and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

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

19. GOVERNING LAW AND JURISDICTION

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

Signed for and on behalf of the Candidate.

_____ [print name here]

_____ Date