

Terms and Conditions of Business



This document is dated

1 PARTIES

1.1 This contract for services is made between:

KPPES LTD, a company registered in Scotland with number SC349485, the registered office of which is at 121 Moffat Street, Glasgow G5 0ND ("**KPPES LTD**"); and

a company registered in
the registered office of which is at
(the "**Company**").

with number

2 INTERPRETATION

2.1 The following terms when used in these terms will have the following meanings:

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

"**Assignment**" means a commitment by KPPES LTD to make Employee(s) available through the Company to provide Services to a given Hirer;

"**Bribery Act**" means the Bribery Act 2010;

"**Employee**" means the Employee of KPPES LTD undertaking the Assignment;

"**Hirer**" means a person engaged in economic activity, public or private, whether or not operating for profit, to whom Employees are supplied, to work temporarily for and under the supervision and direction of that person;

"**Duration**" means the duration of any given Assignment;

"**Fee**" means the fee paid by the Company to KPPES LTD in relation to any given Assignment.

"**First Assignment**" means the relevant Assignment or, if prior to the relevant Assignment the Employee has worked in any assignment in the same role with the relevant Hirer, that assignment;

"**Holiday Pay**" means the amount included in the Fee paid for the Services which will be equal to the statutory entitlement as set out in the relevant legislation;

"**Intellectual Property Rights**" means any and all existing and future intellectual or industrial property rights (whether registered or unregistered) including, without prejudice to the generality of the foregoing, all existing and future patents, copyrights, design rights, database rights, trade marks, semi-conductor topography rights, plant varieties rights, internet rights/domain names, know-how, confidential information and any and all applications for any of the foregoing and any and all rights to apply for any of the foregoing;

"Minimum Rate" means a minimum rate of hourly pay that the Company will pay to KPPES LTD in respect of the provision of the Services. The minimum daily pay is equal to the Minimum Rate multiplied by the actual number of hours worked. The Minimum Rate will increase annually and KPPES LTD will notify the company in writing of its value in advance of it becoming effective.

"Party" means either KPPES LTD or the Company (as appropriate), the term **"Parties"** being construed accordingly;

"Qualifying Period" means 12 continuous Calendar Weeks during the whole or part of which the Employee is supplied by one or more Temporary Work Agencies to the relevant Hirer in the same role and as further set out in Regulation 7 of AWR.

"Relevant Terms and Conditions" means terms and conditions relating to pay, the duration of working time, night work, rest periods, rest breaks and annual leave that are ordinarily included in the contracts of employees or workers (as appropriate) of the Hirer and as further set out in Regulation 6 of AWR;

"Services" means the services to be provided to a Hirer by an Employee in the context of an Assignment;

"Start Date" means, in relation to any given Assignment, the date on which the placement of an Employee is due to commence;

"TWA" means a Temporary Work Agency supplying individuals to work temporarily for; or paying for, receiving or forwarding payment for the services of individuals who are supplied to work temporarily for and under the supervision and direction of Hirers.

"Terms" means the terms and conditions contained in this document;

"Working Time Regulations" means the Working Time Regulations 1998, as amended;

"Works" means all documents, materials, designs, drawings, processes, formulae, computer coding, methodologies, confidential information and other works which relate to the business of the Company or the Hirer prepared by the Employee by virtue of that Employee's provision of Services.

In this Agreement where the context so admits, references to the singular shall include the plural and references to the masculine shall include the feminine and in each case *vice versa*.

3 STATUS OF THE PARTIES AND ANY EMPLOYEE

- 3.1 Nothing in these Terms will give rise to the presumption that KPPES LTD or any of its officers, employees or sub-contractors (including the Employee) is at any time an employee of the Company or the Hirer.
- 3.2 Save as provided for in Clause 9.2.6 of these Terms, to the extent that the Company will attempt to source suitable Assignments for KPPES LTD, there is no obligation on it to do so. Equally, there is no absolute obligation on KPPES LTD to accept any Assignment that may be offered by the Company. However, once the terms of an Assignment have been agreed by the Parties, each shall be obliged to meet their respective obligations in relation to that Assignment, in accordance with these Terms.
- 3.3 When meeting its obligations under these Terms, the Company shall be acting as an employment business, and as such, no fee is payable by KPPES LTD in relation to the Company's identification of potential or actual Assignments.
- 3.4 KPPES LTD and any Employee may, in so far as is permitted by law, opt out of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended). Where any such opt-out has been exercised, KPPES LTD shall issue the Company with a notice to that effect.

- 3.5 These Terms supersede any previous terms which may have been agreed (or deemed to have been agreed) between the Parties and shall apply to all Assignments agreed after the date that these Terms are signed by both Parties.
- 3.6 In the event that these Terms are not signed by both Parties, they will be deemed to have been accepted by the Company on the agreement of new Assignments or on receipt of funds pertaining to Assignments.
- 3.7 Unless otherwise agreed in writing, these Terms shall prevail over any terms of business provided by the Hirer.
- 3.8 The Company warrants and represents to KPPES LTD that when approving an Employee it will in relation to that Employee:
- 3.8.1 make all necessary and proper checks and investigations required by the Hirer;
- 3.8.2 complete all necessary pre-employment, legal and professional checks and investigations as required by any relevant regulations and legislation; and
- 3.8.3 provide all requested documentation and information to KPPES LTD so that KPPES LTD can confirm the Employee's right to work in the UK.
- 3.9 The Company warrants that KPPES LTD shall be entitled to rely on the warranties and representations set out in Clause 3.8 above and shall, on request, supply KPPES LTD with all written evidence of the checks, investigations or processes completed by it, in accordance with that Clause.
- 3.10 The Company undertakes to inform KPPES LTD, and on written request, provide copies of relevant documentation, should any matter arise relating to an Employee in KPPES LTD's employ, including but not limited to, any action either pending or extant taken by the Disclosure and Barring Service or its successors, and any of the checks set out in Clause 3.8 above.

4 ASSIGNMENTS

- 4.1 The Company shall use its reasonable endeavours to obtain suitable Assignments for KPPES LTD and, subject to these Terms, KPPES LTD shall make Employee(s) available to the Company in order to provide the relevant Services.
- 4.2 Where issued, the Company will make available to KPPES LTD a copy of any Assignment Schedule pertaining to the Assignment and any variations thereof.
- 4.3 KPPES LTD acknowledges and agrees that:
- 4.3.1 the nature of temporary work means that there may be periods when no suitable Assignments are available; and no payments shall be made during these periods, save as stated in Clause 9.2.5; and
- 4.3.2 the Company shall solely determine the suitability of KPPES LTD for Assignments.
- 4.4 KPPES LTD is free to assign Employees to other work provided that it does not interfere with KPPES LTD's ability to complete an Assignment for which KPPES LTD is contracted to the Company to deliver. Failure to complete the Assignment will release the Company from any obligation to pay the Fee for any part of the Assignment not completed.

- 4.5 If an Employee is unable to complete an Assignment, a substitute person may only be used where that substitute is either:
- 4.5.1 an Employee; or
 - 4.5.2 able successfully to complete the process of becoming an Employee before undertaking any work under the Assignment.

5 TIMESHEETS

- 5.1 The Employee shall be obliged to:
- 5.1.1 complete a timesheet for each week during which the Employee is committed to an Assignment;
 - 5.1.2 submit completed timesheets to the authorised representative of the relevant Hirer for signature; and
 - 5.1.3 send countersigned timesheets to the Company in a prompt and timeous manner.
- 5.2 If a Hirer refuses or is unable to countersign a timesheet, the Employee will notify the Company and the Company will then investigate the situation with the Hirer, doing so as quickly as is reasonably practicable, all in terms of the Employment Agency and Employment Businesses Regulations 2003 (as amended).
- 5.3 KPPES LTD shall procure that the Employee provides any relevant Services during the Hirer's standard working hours as specified from time to time. If at any time the Hirer requests that the Employee works outside the specified standard hours, KPPES LTD and the Company shall use their best endeavours to agree, both between them and with the Hirer, any changes to the Fee payable. In the absence of any such agreement, either party shall be entitled to terminate the relevant Assignment in accordance with Clause 10.2.
- 5.4 For the purposes of the Working Time Regulations 1998, the Employee's working time shall only consist of those times when the Employee is carrying out Services for the Hirer as part of an Assignment. Time spent travelling to the Hirer's premises, lunch breaks and other rest breaks shall not count as part of the Employee's working time, except in so far as required by legislation.

6 PAYMENT OF FEES

- 6.1 Fees payable to KPPES LTD in relation to each Assignment will be agreed in advance of each Assignment but may vary after the Qualifying Period has been achieved. Fees must always be equal to or more than the current Minimum Rate.
- 6.2 Unless the Parties agree otherwise in advance, the Company shall pay the Fees due in relation to each Assignment on a weekly/fortnightly/monthly, as appropriate, on an arrears basis. The Company shall make such payments promptly following receipt from KPPES LTD of a VAT invoice.
- 6.3 As between KPPES LTD and the Company, KPPES LTD will, in all circumstances, be responsible for paying any PAYE and NI contributions due by virtue of an Employee's involvement in an Assignment.
- 6.4 The Company will pay KPPES LTD the Fees due in relation to any relevant Assignment whether or not the Company has received payment from the Hirer in relation to that Assignment.
- 6.5 On request, the Company will provide KPPES LTD with confirmation of details relating to Assignments, including but not limited to the daily or hourly rate and the number of hours worked by the Employee.

7 CONDUCT OF ASSIGNMENTS

- 7.1 KPPES LTD shall procure that when any Employee is delivering Services under an Assignment, that Employee will:
- 7.1.1 provide the Services with reasonable skill and care under the supervision and direction of the Hirer;
 - 7.1.2 observe any relevant rules and regulations in force at the Hirer's premises where the Services are being carried out (including, without limitation, the Hirer's health and safety procedures) which have been notified to KPPES LTD by the Company or the Hirer; and
 - 7.1.3 not engage in any conduct detrimental to the interests of the Hirer or the Company.
- 7.2 If the Employee is unable to attend the Hirer's premises when required to do so in the course of an Assignment, the Employee will use best endeavours to inform the Company by 10.30am of the relevant working day.

8 HOLIDAYS AND HOLIDAY PAY

- 8.1 The Employee is entitled to holidays as set out in the Working Time Regulations.
- 8.2 Holiday pay is included in the agreed Fee.
- 8.3 It is the Company's responsibility to advise the Employee that Holiday Pay is included in the agreed Fee.
- 8.4 It is the Company's responsibility to advise the Employee should Holiday Pay be treated other than as provided for in Clause 8.2.

9 AWR

- 9.1 The Company warrants and undertakes;
- 9.1.1 to provide KPPES LTD with the comparator information as defined in Regulation 5 of the AWR for each Employee in sufficient time to ensure that the rights defined in Regulation 5 of the AWR have been conferred on the Employee when the Employee qualifies for such rights under AWR.
 - 9.1.2 to ensure that the Hirer has conferred the 'Day 1 Rights' in accordance with Regulations 12 and 13 of the AWR; and
 - 9.1.3 to ensure that it will have conferred the rights under Regulation 5 of the AWR, as applicable, once an Employee has achieved the Qualifying Period.
- 9.2 KPPES LTD acknowledges and agrees that, where advised by the Company, employment may be in accordance with Regulation 10 of the AWR and where an Assignment specifies that Regulation 10 is agreed to apply, KPPES LTD agrees that the following shall apply:
- 9.2.1 KPPES LTD will ensure that the Employee's terms of employment will be in accordance with Regulation 10 of the AWR and will comply with all the conditions necessary to ensure that the Employee has no entitlement to rights under Regulation 6 of the AWR in relation to pay or that such rights are complied with.
 - 9.2.2 KPPES LTD will ensure that the terms and conditions under which the Employee is employed contain the matters set out in Regulation 10 of the AWR.

- 9.2.3 The Company will advise KPPES LTD prior to commencement of the First Assignment that the Company is placing the Employee on Assignment under the provisions of Regulation 10 of the AWR.
- 9.2.4 The Company will advise KPPES LTD in a timely fashion and in any event two weeks prior to the Employee becoming eligible for payment between Assignments that the employee will become eligible and be in receipt of payment between assignments in accordance with Regulation 10 of the AWR.
- 9.2.5 The Company agrees that any payment between Assignments arising from the operation of Regulation 10 of the AWR will be paid by them to KPPES LTD in a timely fashion and KPPES LTD will process same and pay the Employee in accordance with the Employee's payroll cycle.
- 9.2.6 The Company agrees to act as KPPES LTD's authorised agent for the purposes of finding suitable work for the Employee when the Employee is not working but available for work, in accordance with Regulation 10 of the AWR, and the Company agrees to inform KPPES LTD of any work so found and offered to the Employee.
- 9.3 KPPES LTD acknowledges and agrees that, where advised by the Company, employment may be in accordance with Regulation 3(2)(b) of the AWR and where an Assignment specifies that Regulation 3(2)(b) of the AWR is agreed to apply, KPPES LTD agrees that the following shall apply:
- 9.3.1 KPPES LTD will ensure that the Employee's terms of employment will be in accordance with Regulation 3(2)(b) of the AWR and will comply with all the conditions necessary to ensure that the Employee has no entitlement to any rights under the AWR. For the avoidance of doubt, an Employee engaged under Regulation 3(2)(b) of the AWR shall be deemed to fall outwith the scope of the AWR.
- 9.3.2 KPPES LTD will ensure that the terms and conditions under which the Employee is employed contain the matters set out in Regulation 3(2)(b) of the AWR.
- 9.3.3 As the Hirer is the client or customer of KPPES LTD's Employee, it has the benefit of the Employee's obligations in relation to the Hirer, as set out in KPPES LTD's Contract of Employment in accordance with the Contracts (Rights of Third Parties) Act 1999, directly against the Employee as their client or customer; notwithstanding that KPPES LTD is their employer, KPPES LTD is relying upon the Employee's expertise as a professional, their honesty, professionalism and integrity and as such KPPES LTD accepts no liability for a breach leading to a direct claim, whether vicarious or otherwise; accordingly the Employee may be liable for any loss claimed where they are in breach of those obligations or if they have caused any damage to KPPES LTD or the Hirer through his or her negligence or in breach of his or her professional duty or otherwise to the Hirer. Nothing in this clause shall affect the Employee's separate and continuing obligations to KPPES LTD as set out in and provided for by the Employee's Contract of Employment with KPPES LTD.
- 9.4 If an Employee intimates to KPPES LTD that he or she considers that there has been an infringement of the rights conferred in terms of Regulation 5 of the AWR, KPPES shall notify the Company as soon as it is practicable of such event. In such an event, both the Company and KPPES LTD undertake to do all that is necessary in order to ensure compliance with Regulation 16 of the AWR, to include, without limitation, the timeous passing and sharing of all information and documentation that is required in order to ensure such compliance.
- 9.5 KPPES LTD shall indemnify and keep indemnified the Company against any losses, damages, awards, expenses and legal costs the Company may suffer or incur as a result of KPPES LTD's negligence, breach of statutory duty or breach of any term of this Agreement. This indemnity does not extend to any act or omission by the Company or the Hirer.
- 9.6 The Company undertakes and warrants that it will collect and collate information and documentation on the work history of Employees on Assignment through the Company in a form and manner that is compliant with the Company's obligations under the AWR; and
- 9.6.1 submit such information and documentation to KPPES LTD on a weekly basis; or

- 9.6.2 the Company will complete a questionnaire at the end of every 3 months commencing 01 April 2012 and make that available to KPPES LTD within 7 days. For the avoidance of doubt the first questionnaire must be completed for the period 01 April 2012 to 30 June 2012 and made available to KPPES LTD by 07 July 2012.
- 9.6.3 Prior to the expiry of the Qualifying Period, the Company undertakes and warrants that it shall provide KPPES LTD with such information and documentation that evidences that the Assignment is compliant with Regulations 5 & 6 of the AWR: to include, but not being limited to, providing confirmation, as soon as is practicable, of the conferral of the rights provided for by the AWR.
- 9.6.4 In either case, the Company will respond promptly to any reasonable requests for information or documentation from KPPES LTD.

10 TERMINATION

- 10.1 Each Assignment will commence on the Start Date and will continue for the Duration.
- 10.2 Either Party may terminate an Assignment at any time by giving at least seven (7) days prior written notice to the other. Except in the case of dismissal for cause when no notice period shall be required.
- 10.3 Subject to the Parties agreeing a shorter notice period, either Party may terminate these Terms by giving at least 6 months' prior written notice to the other. Where, at the date of termination, any Assignment is ongoing, these Terms will similarly remain in force until such time as that Assignment is terminated or expires.
- 10.4 Termination of these Terms will in no way prejudice any accrued rights or liabilities of either Party.

11 LIMITATION OF LIABILITY AND INSURANCE

- 11.1 Neither Party will be liable to the other under these Terms for any loss of profits, or any special, indirect, economic or consequential loss, whether arising under contract, tort (including negligence) or otherwise.
- 11.2 The total liability of each Party (whether in contract, tort (including negligence), or otherwise) to the other under or in connection with any Assignment will not exceed in aggregate an amount equal to the total Fees paid or payable in relation to that Assignment. Nothing in this Clause 11.2 will be construed as excluding or limiting the liability of either Party for death or personal injury caused by its negligence or for either Party's fraudulent misrepresentation.
- 11.3 KPPES LTD shall maintain employer's liability insurance and public liability insurance during an Assignment in respect of the provision of the Services and shall make a copy of such insurance policies available to the Company on request.
- 11.4 The Company agrees that should any Employee be employed as a Home Tutor, the Company will inform KPPES LTD in advance of any Assignment commencing.
- 11.5 The Company will at all times be responsible for ensuring that the equipment and working environment made available to each Employee involved in the provision of the Services are adequate and safe (in accordance with all applicable laws) for use in the provision of the Services.

12 CONFIDENTIALITY

- 12.1 KPPES LTD acknowledges that, in carrying out an Assignment, the Employee may learn trade secrets or confidential information which relate to the Company and/or the Hirer ("**Confidential Information**"). KPPES LTD shall use reasonable endeavours to procure that unless required to do so in the performance of their duties or as may be required by law, the Employee shall not at any time:
- 12.1.1 divulge or communicate to any person;
- 12.1.2 use for their own purposes or for any purposes other than those of the Company and/or the Hirer;
- cause any authorised disclosure, through any failure to exercise due care and attention, of any Confidential Information.
- 12.2 The restrictions detailed in Clause 12.1 shall not apply to any Confidential Information which becomes generally available to the public otherwise than through a failure by the Employee to observe such restrictions.

13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 KPPES LTD acknowledges and agrees that, as between KPPES LTD and the Company, all Intellectual Property Rights in any Works created, produced or developed by the Employee (whether alone or jointly with others) in the course of an Assignment shall immediately upon creation or performance, vest in and remain the sole and exclusive property of the Company.
- 13.2 KPPES LTD agrees that it shall not and shall use all reasonable endeavours to procure that the Employee shall not register or apply to register any rights in any Intellectual Property Rights which belong to the Company.

Each Party shall execute, or where appropriate use its reasonable endeavours to procure the execution of, all further documents and do, or use its reasonable endeavours to procure to be done, all further acts and things that the other party (the "**Requesting Party**") may reasonably request from time to time at the Requesting Party's expense, in order to enable the Requesting Party to enjoy the full benefit of the right acquired by it under these Terms.

14 GENERAL

- 14.1 KPPES Ltd and the Company jointly warrant that for the duration of this agreement neither shall engage in any activity that could be construed as a breach of the Bribery Act.
- 14.2 If either Party contravenes the Bribery Act, the contravening Party shall indemnify, the other Party, on a full indemnification basis, in respect of all loss, damage or injury sustained as a consequence of such contravention.
- 14.3 KPPES LTD agrees promptly to inform the Company of any change of KPPES LTD's name, registered address, bank details or emergency contact details.
- 14.4 Any notice to be given under these Terms by either Party must be in writing and may be delivered: personally; or by first class post (if sent from an address in the UK to another address in the UK); or by air mail; or by facsimile transmission; or by electronic mail (but expressly excluding texts) In the case of post, such notices will be deemed to have been received 2 working days after the date of posting. In the case of facsimile transmission and electronic mail, notices shall be deemed to have been received at the time of confirmed facsimile and electronic mail transmission. Notices shall be delivered or sent to the addresses of the Parties as set out at the beginning of this Agreement and to current facsimile and electronic mail addresses, or to any other address notified in writing by either Party to the other for the purpose of receiving notices.

- 14.5 A person who is not a Party to these Terms has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision set out in these Terms, save that this Clause does not affect any right or remedy of a third party which exists or is available apart from that Act and as defined in Clause 9.3.3 of this Agreement.
- 14.6 Any amendment to these Terms will only be effective where agreed by the Parties in writing.
- 14.7 The interpretation of these Terms shall be governed by and construed in accordance with the law of England and Wales and the Parties submit to the exclusive jurisdiction of the English Courts.
- 14.8 If any provision contained in these Terms is found by any court of competent jurisdiction to be invalid or unenforceable in whole or in part, it shall not affect the other part of that provision or the other provisions of these Terms which shall remain in full force and effect.
- 14.9 Any schedules attached to this contract shall form part of this contract.

By acceptance of this document, KPPES LTD and the Company agree to be bound by these Terms and any attached Schedules.

KPPES LTD

For and on behalf of: KPPES LTD
Name: Gary Walker
Designation: Director
Signature: 
Date:

THE COMPANY

For and on behalf of:
Name:
Designation:
Acceptance:
Date of Acceptance: