

TERMS OF BUSINESS FOR THE INTRODUCTION AND SUPPLY OF TEMPORARY WORKERS IN THE RAIL AND CONSTRUCTION DIVISION

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply to this agreement.

Actual Vacancies: the Client's vacant positions as the Client informs the Employment Business from time to time in accordance with this agreement.

Assignment: shall have the meaning set out in clause 4.

AWR 2010: the Agency Workers Regulations 2010 (*SI 2010/93*).

Business Day: a day other than a Saturday, Sunday or public holiday when banks in [London] are open for business.

Client: the person, firm, or corporate body together with any subsidiary or associated company as defined by the Companies Act 1985 or 2006 to whom the Temporary Worker or Contractor is supplied or introduced

Conduct Regulations 2003: the Conduct of Employment Agencies and Employment Business Regulations 2003 (*SI 2003/3319*).

Commencement Date: shall be the start of the first day on which the Temporary Worker provides Services to the Client

Employment Business: Civil Rail Solutions Ltd of 7 Henwood Industrial Estate, Ashford, Kent, TN24 8DH

Engage: the employment of a Temporary Worker or engagement directly or indirectly through any employment business other than through the Employment Business (whether for a definite or indefinite period) as a direct result of any Introduction or Assignment to the Client and the terms **Engaged** or **Engagement** shall be construed accordingly.

Group: in relation to a company, that company, each and any subsidiary or holding company from time to time of that company, and each and any subsidiary from time to time of a holding company of that company.

Holding Company: has the meaning given in clause 1.4.

Indemnity: shall have the meaning set out in clause 12 and **Indemnified** and **Indemnifies** shall be construed accordingly.

Introduce: the provision to the Client of information by the Employment Business by way of a curriculum vitae or in such format as the Client may from time to time require which identifies the Worker and **Introduction** and **Introduced** shall be construed accordingly.

Introduction Date: the date the Employment Business Introduces the Temporary Worker to the Client in accordance with clause 3.

Introduction Fee: the sum of 17.5% of the Temporary Worker's annualised gross remuneration or 1300 x the Temporary Worker's hourly rate whichever be the greater.

Other Qualifying Payments: any remuneration payable to the Temporary Worker (other than their basic hourly rate), which is not excluded by virtue of regulation 6 of the AWR 2010, such as any overtime, shift premium, commission or any bonus, incentive or rewards which are directly attributable to the amount or quality of work done by a Temporary Worker and are not linked to a financial participation scheme (as defined by the AWR 2010).

Qualifying Temporary Worker: any Temporary Worker who at the relevant time is entitled to the rights conferred by regulation 5 of the AWR 2010 and in particular has been provided to the Client (whether by the Employment Business or any third party) for the Qualifying Period and in respect of whom the Employment Business has complied with its obligations under clause 3.

Qualifying Period: means the 12-week qualifying period as defined in regulation 7 of the AWR 2010, subject to regulations 8 and 9 of the AWR 2010.

Relevant Period: shall have the meaning set out in regulation 10(5) and (6) of the Conduct Regulations 2003.

Relevant Terms and Conditions: the relevant terms and conditions for any particular Qualifying Temporary Worker as defined in regulation 6 of the AWR 2010.

Screen: carry out pre-vetting checks to the level and criteria as required by the Client from time to time and **Screening** shall be construed accordingly.

Services: any work for which the Temporary Worker has been engaged as agreed between the Employment Business and the Client from time to time

Subsidiary: has the meaning given in clause 1.4.

Temporary Worker: a Worker Introduced and supplied by the Employment Business to the Client to provide services to the Client not as an employee of the Client, who is deemed to be an agency worker for the purposes of regulation 3 of the AWR 2010.

Temporary Worker Fees: shall have the meaning set out in clause 6.4.

Territory: the United Kingdom.

Unsatisfactory Temporary Worker: has the meaning set out in clause 6.2.

Valid Opt-Out: means written notification from a company Worker and the individual provided by that company Worker in accordance with regulation 32(9) of the Conduct Regulations 2003, as amended from time to time.

VAT: value added tax chargeable under the Value Added Tax Act 1994.

Worker: an individual worker, or, where the worker is a company or other legal entity including the individual worker, as the case may be including any of the Employment Business's own employees, workers or agency staff.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.7 A reference to **writing** or **written** includes fax and e-mail.
- 1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.9 References to clauses are to the clauses of these terms.
- 1.10 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. FORMATION OF THE CONTRACT

- 2.1 These terms shall be incorporated into any and all contracts between the Employment Business and the Client.
- 2.2 These conditions override any other terms which the Client may subsequently seek to impose.
- 2.3 Any statement by an employee or representative (other than a director) of the Employment Business to:-
- 2.3.1 Vary any of these terms or introduce other terms, written or oral into the contract which are contrary to the terms herein; and/or
- 2.3.2 Give any advice, make any representation, agree any condition precedent or enter into any collateral contract

Shall not be binding on the Employment Business unless confirmed by the Employment Business in writing and signed by a director

3. EMPLOYMENT BUSINESS'S OBLIGATIONS

- 3.1 These terms set out the terms which govern the agreement between the Employment Business and the Client for the supply of Temporary Workers by the Employment Business to the Client. For the purposes of the Conduct Regulations 2003, the Employment Business acts as an employment business in relation to the Introduction and supply of Temporary Workers pursuant to this agreement.
- 3.2 The Employment Business agrees to search, in the Territory, for Workers for the Client as Temporary Workers who meet the Client's minimum qualifications and other criteria for the Actual Vacancies.
- 3.3 The Employment Business agrees to Screen all Workers and Introduce to the Client only Workers who meet the minimum criteria for the position as set out by the Client in accordance with clause 4 and have an interest in the positions for which they are Introduced. The Employment Business will only Introduce Workers who have the right to work in the Territory and, in particular, the Employment Business shall comply with the Immigration Asylum and Nationality Act 2006 and other relevant UK legislation or equivalent legislation in the relevant jurisdiction as well as any regulations or relevant codes of practice regarding the reporting of labour movements, concealed employment and the employment of foreign workers.
- 3.4 Prior to the commencement of the Assignment, the Employment Business will inform the Client of the following matters (such information shall form part of the contract between the parties):
- (a) the identity of the Temporary Worker;
 - (b) the Temporary Worker's experience, training, qualifications and authorisations necessary for the Assignment;
 - (c) the hourly rate charged by the Employment Business in accordance with clause 6.4;

3.5 The Employment Business shall, where relevant, inform the Client whether it holds a Valid Opt Out for each Temporary Worker whom it Introduces to the Client.

4. CLIENT'S OBLIGATIONS

When making a request for the provision of a Temporary Worker to perform certain services (Assignment), the Client will give the Employment Business details of:

- (a) the date on which the Client requires the Temporary Worker to commence work and the duration, or likely duration, of the work;
- (b) the position which the Client seeks to fill, including the type of work the Temporary Worker in that position would be required to do, the location at which, and the hours during which, the Temporary Worker would be required to work, and any risk to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
- (c) the experience, training, qualifications and any authorisation which the Client considers are necessary, or which are required by law, or by any professional body, for the Temporary Worker to possess in order to work in the position;
- (d) any expenses payable by or to the Worker;
- (e) any risks to health and safety; and
- (f) any information reasonably required by the Employment Business in order for the Employment Business to fulfil its obligations under the AWR 2010.

5. TEMPORARY TO PERMANENT

5.1 If, following the Introduction of a Temporary Worker by the Employment Business to the Client within the Relevant Period, the Client Engages the Temporary Worker or introduces the Temporary Worker to any other person who then Engage the Temporary Worker, the Client will pay the Employment Business the Introduction Fee.

6. TEMPORARY WORKERS

6.1 The Employment Business shall notify the Client immediately if it believes that any Temporary Worker is unsuitable for the Assignment or becomes aware of any matter that indicates that a Temporary Worker may be unsuitable for the Assignment or is inconsistent with any information previously provided including where a Temporary Worker ceases to have the appropriate skills, approvals or a right to work in the United Kingdom or where these terms may be or has been breached.

6.2 If the Client decides that a Temporary Worker is unsuitable to perform the Assignment (an Unsatisfactory Temporary Worker), then the Client shall notify the Employment Business in writing of that fact giving the grounds for its dissatisfaction with the Unsatisfactory Temporary Worker. The Assignment shall terminate at the end of the day on which the Employment Business is notified, and Temporary Worker Fees shall be payable up to the date of such termination.

6.3 The Employment Business or the Client may cancel or amend an Assignment on reasonable notice of no less than 24 hours prior to the commencement of the Assignment. Any such cancellation or amendment shall be effective immediately upon the giving of notice by one party to the other (which may be given by telephone, e-mail or in writing). If notice of cancellation is given by the Client to the Employment Business less than 24 hours prior to commencement of the Assignment, the Employment Business shall be entitled to charge the full Temporary Worker Fees for the anticipated duration of the Assignment.

6.4 The Client will pay the Employment Business Temporary Worker Fees in respect of Temporary Workers as advised by the Employment Business to the Client prior to the commencement of the Assignment (Temporary Worker Fees) which may include travelling, hotel and other expenses to be agreed between the parties from time to time. The Temporary Worker Fees comprise the Temporary Worker's pay and holiday pay, and include the Employment Business's commission and employer's National Insurance contributions. When booking a Temporary Worker for an Assignment, the Employment Business shall advise the Client of the agreed Temporary Worker Fees for that Temporary Worker. The following conditions apply to the Temporary Worker Fees:

- (a) they are calculated according to the number of hours worked by the Temporary Worker (to the nearest quarter hour);
- (b) the minimum period of any Assignment shall be 8 hours for all weekday shifts (Monday to Friday) and 10 hours for all weekend shifts (Saturday and Sunday);
- (c) the Client shall during the Assignment sign a time sheet verifying the number of hours worked by the Temporary Worker during a particular week. If the Client is unable to sign a time sheet produced for authentication by the Temporary Worker because the Client disputes the hours claimed, the Client shall inform the Employment Business as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what hours, if any, were worked by the Temporary Worker. Failure to sign the time sheet does not absolve the Client of its obligation to pay the Temporary Worker Fees in respect of the hours actually worked;

- (d) it is acknowledged that the Client shall not decline to sign a time sheet on the basis that it is dissatisfied with the work performed by the Temporary Worker. In cases of unsuitable or unsatisfactory work the provisions of clause 6.2 shall apply.
- (e) all invoices shall be submitted with all applicable time sheets verifying the number of hours worked by the Temporary Worker;
- (f) Unless the Client has a pre-agreed credit facility, the Client is required to pay for the Temporary Worker Fees in advance of the commencement of the Assignment. For those with a credit facility, the Client shall be invoiced weekly and invoices are payable within 30 days of the date of the invoice. Payment by the Client shall constitute acceptance of the charges and hours worked.
- (g) for the avoidance of doubt, the Client shall not be required to pay Temporary Worker Fees for any absences (for whatever reason) of a Temporary Worker;
- (h) the Employment Business shall not withhold any payment due to a Temporary Worker because of any failure by the Client to pay the Employment Business;
- (i) the Employment Business may increase the fees payable under this agreement upon prior notice to the Client of no less than one week;

7. VAT, CREDIT AND OTHER PAYMENT TERMS

- 7.1 Where applicable, the Employment Business shall charge VAT to the Client, at the prevailing rate, after the Employment Business has provided the Client with a VAT invoice.
- 7.2 The Employment Business may in its sole discretion agree with a Client a credit facility in which event, subject to the Client's compliance with these conditions the Employment Business will supply Temporary Workers and other agreed services or materials of an invoice value up to the limit of the agreed credit.
- 7.3 If the Client's credit limit is exceeded, provision of Temporary Workers and/or services or materials may be suspended until the Client's credit is reduced below the limit or the Employment Business.
- 7.4 The Employment Business may at its absolute discretion withdraw or reduce a Client's credit facility at any time for any reason.
- 7.5 If the Client fails to make any payment due to the Employment Business under this agreement by the due date for payment, then in addition to any other rights and remedies available to the Employment Business, the Client shall pay interest on the overdue amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 ("Act") as well as Late Payment Charges and reasonable costs of recovery in accordance with the Act. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount. In addition, the Employment Business may appropriate any payment made by the Client to such invoice as the Employment Business may at its sole discretion and/or require immediate payment in respect of any invoices notwithstanding any other payment terms that may have previously applied.
- 7.6 The Client may not withhold payment of any invoice or other amount due to the Employment Business by reason of any right of set off or counterclaim for any reason whatsoever
- 7.7 The Employment Business shall have the right of set off for any amounts owed to the Client against amounts owed by the Employment Business.
- 7.8 Payment of the Employment Business' invoice shall not be dependent on any procedural formalities required by the Client, including but not limited to the provision of a purchase order number

8. DEFAULT AND EARLY TERMINATION

- 8.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other if:
 - (a) Either party commits a material breach of any term of this agreement and (if such a breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing to do so;
 - (b) Either party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - (c) Either party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- (d) Either party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Employment Business with one or more other companies or the solvent reconstruction of the Employment Business;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of either party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Employment Business with one or more other companies or the solvent reconstruction of the Employment Business;
- (f) either party (being an individual) is the subject of a bankruptcy petition order;
- (g) a creditor or encumbrancer of either party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over either party (being a company);
- (i) a floating charge holder over the assets of either party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over the assets of the either party or a receiver is appointed over the assets of either party;
- (k) any event occurs, or proceeding is taken, with respect to either party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8(c) to clause 8(j) (inclusive);
- (l) either party suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
- (m) Either party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

9. EFFECT OF EARLY TERMINATION

9.1 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

9.2 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

10. ANNOUNCEMENTS

No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

11. AUDIT AND RECORD-KEEPING

The Employment Business shall keep and maintain until six years after the Assignment has been completed, or as long a period as may be agreed between the parties, full and accurate records of the agreement including, in particular:

- (a) the services provided by the Employment Business under this agreement;
- (b) all expenditure reimbursed by the Client;
- (c) all payments made by the Client;
- (d) the terms on which it or any sub-contractors engage any Temporary Workers; and
- (e) the Screening undertaken on any Temporary Workers.

The Employment Business shall on request provide the Client or the Client's representatives such access, on reasonable notice and within normal working hours, to those records as may be reasonably required in connection with this agreement.

12. INDEMNITIES AND INSURANCE

12.1 The Employment Business undertakes all reasonable efforts to ensure reasonable standards of skills, reliability, integrity, and experience from the temporary worker and provide them in accordance with the Clients booking but no liability is accepted by the employment business for any claim arising from failure to provide a temporary worker for all or part of an assignment or from any loss or damage attributable to negligence, dishonesty, misconduct or lack of skills.

- 12.2 Agency Workers supplied by the Employment Business are not the employees of the Employment Business, but are deemed to be under the supervision and direct control of the Client from the time they report to take up duties and for the duration of the Assignment. The Client agrees to be responsible for all acts, errors or omissions of the Agency Worker, whether wilful, negligent or otherwise as though the Agency Worker were an employee of the Client.
- 12.3 Subject to the other provisions of these Conditions, the Employment Business shall not be liable for any indirect or consequential loss (both of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss) costs, damages, charges expenses caused directly or indirectly by any delay or failure.
- 12.4 The Employment Business shall be responsible for deduction and payment of all tax, National Insurance contributions and other taxes and levies in respect of persons employed (for the avoidance of doubt on a PAYE basis only) by the Employment Business and shall keep the Client and any successor to the Employment Business Indemnified against all liability to make such statutory payments that may be suffered or incurred by the Client and any successor to the Employment Business. A Temporary Worker who is self-employed or engaged under the CIS scheme shall be responsible for deduction and payment of their own income tax, National Insurance contributions and other relevant taxes and accordingly the Employment Business does not offer an indemnity to the Client in that regard.
- 12.5 The Employment Business shall ensure that Temporary Workers are contractually obliged to comply with:
- (a) all relevant statutes, laws, regulations and codes of practice from time to time in force in the performance of an Assignment and applicable to the Client's business;
 - (b) the Client's health and safety policy whilst the Temporary Workers are on the Client's premises or any of the Client's customers' or suppliers' or agents' (direct or indirect) premises; and
 - (c) a restriction not to disclose any confidential information of the Client or any of the Client's customers or suppliers or agents (direct or indirect), which they may acquire during the course of the Assignment.
- 12.6 Prior to the commencement of any work by a Qualifying Temporary Worker in relation to an Assignment, or by a Temporary Worker who during the course of work on that Assignment will become a Qualifying Temporary Worker, the Employment Business shall notify the Client of this fact, and agree with the Client the applicable Temporary Worker Fees, including any Other Qualifying Payments which may be payable.
- 12.7 The Employment Business shall and shall ensure that it shall at all times comply with their obligations under the AWR 2010, including but not limited to providing any Qualifying Temporary Worker with the Relevant Terms and Conditions in accordance with regulation 5.
- 12.8 The Client shall at all times comply with its obligations under the AWR 2010, including but not limited to providing any Temporary Workers with access to collective facilities and amenities and employment opportunities subject to and in accordance with regulation 12 and 13 of the AWR 2010.
- 12.9 In the event that either party receives an allegation by any Temporary Worker 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. The parties shall co-operate with each other in relation to responding to that allegation, which shall include supplying any information which may be reasonably requested by the other party, and complying with any reasonable requests in relation to the contents of any response.
- 12.10 The Employment Business will within seven days of receiving a written request from the Client provide to it:
- (a) the number of Temporary Workers currently being supplied to the Client;
 - (b) the parts of the Client's undertaking in which those Temporary Workers are working; and
 - (c) the type of work those Temporary Workers are carrying out;
- together with any other information which the Client may reasonably request in relation to any payments made by the Employment Business, its sub-contractors or any other intermediaries to any Temporary Workers, in order to ensure compliance with the AWR 2010.
- 12.11 During the term of this agreement (and for a period of 12 months thereafter), the Employment Business shall maintain in force, with a reputable insurance company, professional indemnity insurance.
- 12.12 The provisions of this clause 12 shall survive termination of this agreement.

13. CONFIDENTIALITY

- 13.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 13.2.
- 13.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this agreement.

14. DATA PROTECTION COMPLIANCE

- 14.1 To the extent that any data or information belonging to the Client is personal data within the meaning of the Data Protection Act 1998 or equivalent legislation in the territory:
- (a) the Employment Business will process such data and information only in accordance with the Client's instructions;
 - (b) the Employment Business will not transmit such data and information to a country or territory outside the European Economic Area without the Client's prior express written consent; and
 - (c) the Employment Business will take such technical and organisational measures against unauthorised or unlawful processing of such data and information and against accidental loss or destruction of, or damage to, such data and information as are appropriate to the Client as data controller.

- 14.2 The Employment Business may make periodic searches at credit reference agencies and fraud prevention agencies to manage the Clients account, to take decisions regarding credit, including whether to make available or to continue to extend existing credit. A record may be kept of this search and the Client agrees to the Employment Business sharing this information.

15. WARRANTIES AND UNDERTAKINGS

- 15.1 The Employment Business warrants that has the necessary expertise to provide the services contemplated in this agreement and will perform them in keeping with the highest professional business standards by using appropriately qualified, experienced and trained personnel.
- 15.2 The Employment Business warrants that it does and it shall comply with the all relevant statutes, laws, regulations and codes of practice from time to time in force in the relevant Territory.
- 15.3 Each party warrants that it has full capacity and authority to enter into and perform this agreement.

16. NON-SOLICITATION

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

17. ASSIGNMENT AND OTHER DEALINGS

- 17.1 The Client shall not assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the Employment Business (such consent not to be unreasonably withheld or delayed).
- 17.2 The Employment Business shall not sub-contract or delegate in any manner any or all of its obligations under this agreement to any third party or agent without the prior written consent of the Client. It shall be a condition of such consent that the sub-contractor signs and observes an agreement containing terms at least as onerous as those contained in this agreement. Without prejudice to this clause, the Employment Business shall in all cases retain sole responsibility for the performance of the tasks assigned to it under this agreement, regardless of the use of authorised or unauthorised sub-contractors and the Employment Business shall be liable for the acts and omissions of any sub-contractor (of any tier and authorised and unauthorised) or any intermediaries whatsoever as if they were the acts and omissions of the Employment Business itself.

18. NO PARTNERSHIP OR AGENCY

18.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

18.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

19. AGREEMENT

19.1 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

19.2 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

19.3 Nothing in this clause shall limit or exclude any liability for fraud.

20. THIRD PARTY RIGHTS

No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

21. NOTICES

21.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by fax to its main fax number.

21.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- (c) if sent by fax, at 9.00 am on the next Business Day after transmission.

21.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

22. GOVERNING LAW

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

23. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

24. FORCE MAJEURE

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement, including payment, if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 3 weeks, the party not affected may terminate this agreement by giving 7 days' written notice to the affected party.

25. SEVERANCE

25.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

25.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

26. WAIVER

26.1 Failure or delay by the Employment Business in enforcing or partially enforcing any provision of the contract shall not be construed as a waiver of its rights under the contract.

26.2 Any waiver by the Employment Business of any breach, or any default under provision of the contract by the Employment Business shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the contract