

**Limited Company Terms of Business**

**This agreement is between and by**

.....TG Recruitment Limited (Company Number: SC305989).....

And

.....

**Dated:**.....

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## AGREEMENT WITH A LIMITED COMPANY CONTRACTOR (MOBILE WORKERS)

### 1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement the following definitions apply:

**“AETR”** means the European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport of 1 July 1970.

**“Agency Workers Regulations”** means the Agency Workers Regulations 2010;

**“Assignment”** means the Contractor Services to be performed by the Contractor Staff for the Client for a period of time during which the Contractor is supplied by the Employment Business to provide the Contractor 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 services of the Contractor and identified in the attached Schedule;

**“Conduct Regulations”** means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;

**“Confidential Information”** shall mean any and all confidential, commercial, financial, marketing, technical or other information or data of whatever nature relating to the Client or the 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 Contractor 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;

**“Contractor”**

means Limited Company Contractor;

***(insert Ltd Company, Address & Registered number)***

.....

.....

**“Contractor Fees”**

means the fees payable to the Contractor for the provision of the Contractor Services as set out in the Schedule. For the avoidance of doubt, the Contractor Fees include the agreed fees for the Contractor Services, any expenses or disbursements authorised by the Client and VAT charged at the applicable rate;

**“Contractor Services”**

means services as a driver to be supplied as and when requested by the Client;

**“Contractor Staff”**

means such of the Contractor’s employees, workers, officers or representatives provided to perform the Contractor Services (and, save where otherwise indicated, includes any officer, employee, worker or representative of any third party to whom the provision of the Contractor Services is assigned or sub-contracted with the prior approval of the Client);

<b>“Driving Legislation”</b>	means the Transport Act 1968, the AETR, the Road Transport (Working Time) Regulations and the EU Drivers’ Hours Regulations;
<b>“Employment Business”</b>	TG Recruitment Limited (registered company no. SC305989) 25 Pitcairn Park, Leuchars, Fife, KY16 0HA;
<b>“EU Drivers Hours Rules”</b>	means Community Drivers’ Hours Regulation (EC) 561/2006;
<b>“IR35 Legislation”</b>	means Chapter 8 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 and the Social Security Contributions (Intermediaries) Regulations 2000;
<b>“Losses”</b>	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;
<b>“Mobile Worker”</b>	means any “mobile worker” as defined under the Road Transport (Working Time) Regulations;
<b>“Other Work”</b>	means all activities which are defined as working time under the Working Time Directive except driving and includes any work within or outside the transport industry where the Worker is not at the disposal of the Client;
<b>“Period of Availability”</b>	means a “period of availability” as defined under the Road Transport (Working Time) Regulations, namely a period during which the Mobile Worker is not required to remain at his/her workstation, but is required to be available to answer any calls to start or resume driving or to carry out

other work, including periods during which the Mobile Worker is accompanying a Vehicle being transported by a ferry or by a train as well as periods of waiting at frontiers and those due to traffic prohibitions provided that the Mobile Worker knows before the start of the period about that period of availability and the reasonably foreseeable duration of the period of availability.

- 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 this 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 Schedule ("**Agreement**") constitutes the entire agreement between the Employment Business and the Contractor for the supply of the Contractor Services to the Client and governs the Assignment undertaken by the Contractor with the Client. This Agreement shall prevail over any other terms put forward by the Contractor.
- 2.2. For the avoidance of doubt this Agreement shall not be construed as a contract of employment between any Contractor Staff supplied to provide the Contractor Services 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 Contractor.
- 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 Contractor and set out in

writing and a copy of the varied Agreement is given to the Contractor stating the date on or after which such varied Agreement shall apply.

- 2.4. The Schedule shall specify the Client, the Contractor Fees payable by the Employment Business and such expenses as may be agreed, any notice period and any other information relevant to the Assignment.

### **3. RELATIONSHIP BETWEEN THE EMPLOYMENT BUSINESS AND THE CONTRACTOR AND BETWEEN THE CLIENT AND THE CONTRACTOR**

- 3.1. The Employment Business is not obliged to offer Assignments to the Contractor and the Contractor 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 Contractor 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 Contractor Staff (including the payment of taxation and compliance with the immigration laws applicable to the jurisdiction in which the Contractor Services are provided) shall fall upon and be discharged wholly and exclusively by the Contractor.
- 3.3. Nothing in this Agreement shall render any member of the Contractor Staff an employee or worker of either the Employment Business or the Client. The Contractor shall ensure that none of the Contractor Staff holds 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 Contractor Staff are an employee/employees or worker/workers of the Employment Business or the Client, the Contractor 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 shall incur.
- 3.4. The Contractor acknowledges that no member of the Contractor Staff is 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 Contractor 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 any member of the Contractor Staff under the Agency Workers Regulations.

- 3.5. The Contractor shall provide the Contractor 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 Contractor 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 Contractor 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.
- 3.6. Save as otherwise stated in this Agreement, the Contractor shall be entitled to supply its services to any third party during the term of this Agreement provided that this in no way compromises or is to the detriment of the supply of its services to the Client or amounts to a breach of this Agreement.
- 3.7. The Contractor shall be permitted to determine how it will provide the Contractor Services, subject to complying with any reasonable operational requirements of the Client. Where the Contractor Services are undertaken at the Client's site, the Contractor 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 CONSULTANCY**

4.1. The Contractor warrants to the Employment Business that:

- 4.1.1.1. 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 Contractor Staff have the necessary skills and qualifications to perform the Contractor Services;

- 4.1.3. the Contractor and the Contractor Staff providing the Contractor Services have agreed to opt out of the Conduct Regulations and have signed an agreement to that effect and as such understand that none of the Conduct Regulations apply to this Assignment. Further the Contractor warrants that it will only supply staff to perform the Contractor Services who have opted out of the Conduct Regulations and further that any person to whom the performance of the Contractor Services are assigned or sub-contracted has opted out of the Conduct Regulations; and
  - 4.1.4. the Contractor 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 Contractor shall procure that the Contractor Staff, any sub-contractor or assignee performing the Contractor 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 Contractor warrants to the Employment Business that the Contractor Staff have consented in writing to the Employment Business, any other intermediary involved in supplying the services of the Contractor and the Contractor Staff to the Client (now or in the future) and to the Client:
  - 4.3.1.1. processing the Contractor Staff’s personal data for purposes connected with the provision of the Contractor Services and pursuant to this Agreement; and
  - 4.3.2. exporting and/or processing the Contractor Staff’s personal data in jurisdictions outside the European Economic Area for purposes connected with the performance of this Agreement.

## 5. OBLIGATIONS OF THE CONSULTANCY

5.1. The Contractor agrees on its own part and on behalf of the Contractor Staff as follows:

- 5.1.1.1. to observe any relevant rules and regulations of the Client's establishment or the premises where the Contractor Services are being performed to which attention has been drawn or which the Contractor 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 Contractor and the Contractor Staff;
- 5.1.2. to comply with the Data Protection Act 1998 in respect of any personal data which the Contractor is granted access to for the purpose of or by reason of the performance of the Contractor Services;
- 5.1.3. 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;
- 5.1.4. 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;  
  
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;
- 5.1.5. not to sub-contract or assign to any third party any of the Contractor Services which it is required to perform under the Assignment except in accordance with clause 3.5;

- 5.1.6. to furnish the Client and/or the Employment Business with any progress reports as may be requested from time to time;
- 5.1.7. to notify the Employment Business forthwith in writing if it should become insolvent;
- 5.1.8. to comply with all the requirements of VAT legislation and the Companies Acts;
- 5.1.9. To comply with all relevant legal obligations, including but not limited to statutory obligations; and
- 5.1.10. to provide at its own cost, subject to any agreement to the contrary specified in the Schedule all such necessary equipment as is reasonable for the adequate performance by the Contractor Staff of the Contractor Services;
- 5.1.11. to assume responsibility for keeping and maintaining records of Contractor Staff Working Time and night work under the Road Transport (Working Time) Regulations 2005).
- 5.1.12. take all reasonable steps to safeguard its health and safety, the safety of Contractor Staff and that of any other person who may be present or be affected by the actions of the Contractor or its staff (such steps to include for the avoidance of doubt (without limitation) steps to ensure compliance with any relevant legislation applicable to the countries in which any journeys (or any portion of journeys) take place relating to the use of mobile telephones and similar devices including (without limitation) smart phones and personal digital assistants) and comply with the health and safety policies and procedures of the Client;
- 5.1.12.1. take all reasonable steps to comply with the Driving Legislation and Working Time Regulations as are applicable;

- 5.1.12.2. with regard to any journeys (or any portion of journeys) that take place (or partly take place) in countries that are neither in the EU nor signatories to the AETR, take all reasonable steps to comply with the applicable domestic rules and regulations of the relevant countries relating to the number of hours worked, the keeping of records and any other relevant driving or health and safety requirements of the relevant countries; not incur any tickets, fines, penalties or similar for parking, speeding or any other motoring or driving offences;
  - 5.1.12.3. take all reasonable steps to comply with the Department of Transport's Highway Code and any other rules regarding road safety applicable to the country or countries in which any journeys (or portion of journeys) take place. Take all reasonable steps to ensure that any Vehicle used by the Contractor or its staff complies with the Health Act 2006 and in particular refrain from smoking in the Vehicle and, if a member of the Contractor's Staff is the driver, has management responsibilities for the Vehicle or is responsible for order or safety on the Vehicle to prevent and stop any person from smoking in the Vehicle;
  - 5.1.12.4. to take all reasonable steps to operate any tachograph correctly in order to record activities accurately and fully and to comply with regulatory rules regarding the use of tachographs and driver cards and any instructions of the Client and/or Employment Business with regard to the user of tachographs and driver cards.
- 5.2. If the Contractor is unable for any reason to provide the Contractor Services during the course of the Assignment, the Contractor 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 Contractor 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 Contractor becomes aware of any reason why it or the Contractor Staff may not be suitable for an Assignment, the Contractor shall notify the Employment Business without delay.

5.4. The Contractor 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 Contractor by way of set off or deduction from any sums owed by the Employment Business to the Contractor.

5.5. For the avoidance of doubt, where the Road Transport (Working Time) Regulations apply:

5.5.1. the number of hours worked by the Contractor during a week comprises the total number of hours of Working Time, Other Work for any employer or Client and any Period of Availability. Time spent travelling to the Client's premises (apart from time spent travelling between two or more premises of the Client), lunch breaks and other rest breaks shall not count as part of the Contractor's working time under the Road Transport (Working Time Regulations) and accordingly the Contractor will not be paid by the Employment Business or the Client for such periods of time; and

the relevant reference period used by the Employment Business to calculate the average Working Time will be a 17 week reference period as specified in the Road Transport (Working Time) Regulations. In certain circumstances this reference period may be changed to a rolling 17 week reference period, in which case the Employment Business will notify the Contractor in writing accordingly. In addition, the relevant reference period used by the Employment Business may be increased to 26 weeks if the particular worker enters into a valid collective agreement or workforce agreement (as defined in the Road Transport (Working Time Regulations) with the Employment Business.

5.6. For the avoidance of doubt, Other Work will not be treated as rest for the purposes of the EU Drivers' Hours Regulation or the Road Transport (Working Time Regulations).

## 6. OBLIGATIONS OF THE EMPLOYMENT BUSINESS

6.1. Throughout the term of this Agreement the Employment Business will:

6.1.1. pay the Contractor the agreed Contractor Fees in respect of the provision of the Contractor Services in accordance with clause 8 below, subject to any right of set off or deduction in clause 5.4;

- 6.1.2. Furnish the Contractor with the information set out in the Schedule in order for the Contractor to arrange for the provision of the Contractor Services; and advise the Contractor of any health and safety information or advice which it receives from the Client which may affect the Contractor Staff during the Assignment.

## **7. INVOICING**

- 7.1. At the end of each week of the Assignment the Contractor shall deliver to the Employment Business its invoice for the Contractor Fees due from the Employment Business to the Contractor giving a detailed breakdown showing the work performed.
- 7.2. The Contractor shall obtain the signature of an authorised representative of the Client as verification of execution of the provision of the Contractor Service for each of its invoices.
- 7.3. The Contractor's invoice should bear the Contractor's name, the Contractor's company registration number and VAT number and should state any VAT due on the invoiced sum.
- 7.4. The Employment Business shall not be obliged to pay any fees to the Contractor unless an invoice has been properly submitted by the Contractor in accordance with this clause 7 of this Agreement and until the Client has verified the execution of the Assignment and received payment from the Client.

## **8. CONSULTANCY FEES**

- 8.1. The Employment Business will pay the Contractor the Contractor Fees as agreed subject to:
- 8.1.1. the satisfactory performance of the Services;
- 8.1.2. the Contractor's compliance with this Agreement; and
- 8.1.2.1. The Employment Business' receipt of the Contractor's invoice in accordance with clause 7 above.

- 8.2. The Contractor shall be responsible for any PAYE Income Tax and National Insurance Contributions and any other taxes and deductions payable in respect of the Contractor Staff for the Assignment (including any social fund contributions payable in any other Member State pursuant to a valid A1, E101 or E102 certificate issued to any of the Contractor Staff).
- 8.3. All payments due from the Employment Business will be made to the Contractor and not to any third party or member of the Contractor Staff, any sub-contractor or assignee.
- 8.4. The Employment Business shall not be obliged to pay the Contractor for any periods during which the Contractor Services are not provided, whether this is due to the Contractor being unable to provide the Contractor Services or where the Client does not require the Contractor Services or otherwise in respect of holidays, illness or absence of the Contractor Staff.
- 8.5. The Contractor shall bear the cost of any training which the Contractor Staff may require in order to perform the Contractor Services.

## 9. TERM and termination

This Agreement shall commence on **(insert date)** ..... and shall continue until terminated by the Employment Business or the Contractor on giving the other party notice in writing at any time.

## 10. INTELLECTUAL PROPERTY RIGHTS

The Contractor acknowledges that all copyright, trademarks, patents and other intellectual property rights deriving from the provision of the Contractor Services, by the Contractor, the Contractor Staff and/or any third party to whom the Contract 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 Contractor and set out in the Schedule. Accordingly the Contractor shall (and shall procure that any relevant member of the Contractor Staff 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 the Client's rights pursuant to this clause.



## 11. CONFIDENTIALITY

11.1. In order to protect the confidentiality and trade secrets of the Client and/or the Employment Business and without prejudice to every other duty to keep secret all information given to it or gained in confidence the Contractor agrees on its own part and on behalf of its Contractor Staff 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 its possession including documents and other materials created by it or the Contractor Staff 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. RESTRICTION

The Contractor shall not and shall procure that the Contractor Staff shall not for a period of 3 months following the termination of the Assignment supply the services of the Contractor Staff directly, or through any other person, firm or company, to any Client for whom it has carried out the Assignment at any time during the previous 6 months save in the case of supply through an

Employment Business or recruitment consultancy with whom the Contractor was also registered at the date of commencement of the Assignment.

### **13. LIABILITY**

The Contractor shall ensure the provision of adequate Public Liability Insurance and any other suitable policies of insurance in respect of the Contractor and the Contractor Staff during an Assignment and shall make a copy of the policy available to the Employment Business upon request.

### **14. INDEMNITY**

The Contractor 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 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 Agreement are an accurate reflection of the relationship between the Client and the Contractor. Furthermore the Employment Business accepts no liability to indemnify the Contractor for any Losses incurred by the Contractor whether by reason of tax or other statutory or contractual liability or any such 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 Contractor in favour of the Client, notwithstanding that the Client is not a party to this Agreement.

## 19 Force Majeure

Neither party is liable for failure to perform, except with respect to payment obligations, solely caused by:

- fires,
- floods,
- civil unrest,
- natural disasters,
- acts of civil or military authorities,
- acts by common carriers, emergency conditions (including weather conditions) incompatible with safety or good quality workmanship, or
- any similar unforeseen event that renders performance commercially implausible.

If an event of force majeure occurs a Party shall not be deemed in default of this Agreement, nor shall it hold the other Party responsible for, any cessation, interruption or delay in the performance of its obligations.

## 20. 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.

Signature \_\_\_\_\_

***Signed for and on behalf of TG Recruitment Limited, Headlands House, Kettering Parkway, Kettering, Northants, NN15 6WJ (the Employment Business)***

Print Name \_\_\_\_\_ Date\_\_\_\_\_

Signature \_\_\_\_\_

***Signed for and on behalf of [insert Ltd Company, Address & Registered number]***

\_\_\_\_\_  
(The Contractor)

Print Name \_\_\_\_\_ Date\_\_\_\_\_