



## Herd Care Limited Terms of Business 2018

### THE PARTIES

- (1) Herd Care Limited (registered company no. 10961608 of 89, Leigh Road Eastleigh Hampshire SO50 9DQ ("**the Employment Business**").
- (2) The Hirer ("**the Client**") to whom the Contractor is Introduced. For the avoidance of doubt the Client shall also include any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Contractor is introduced.

### RECITALS

- (A) The Employment Business carries on the business of sourcing and supplying Contractors to provide services to Clients of the Employment Business. The Client has instructed the Employment Business to supply a Contractor to provide certain services, as specified in the attached schedules ("**the Schedules**") ("**the Contractor Services**").
- (B) The Employment Business will introduce a Contractor to the Client to provide the Contractor Services to the Client on the terms and subject to the conditions of this Agreement.

IT IS AGREED as follows:

### 1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement the following definitions apply:

<b>"Assignment"</b>	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;
<b>"Charges"</b>	means the charges as notified to the Client at the commencement of the Assignment and which may be varied by the Employment Business from time to time during the Assignment. The charges are comprised of the Contractor Fees, the Employment Business' commission, and any travel, hotel or other disbursements as may have been agreed with the Client or, if there is no such agreement, such expenses as are reasonable;
<b>"Conduct Regulations"</b>	means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
<b>"Contractor"</b>	means the person, firm or corporate body Introduced to the Client by the Employment Business to carry out an Assignment (and, save where otherwise indicated, includes Contractor Staff and any third party to whom the provision of the Contractor Services is assigned or sub-contracted);
<b>"Contractor Fees"</b>	means the fees payable to the Contractor for the provision of the Contractor Services;
<b>"Contractor Staff"</b>	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);
<b>"Data Protection Laws"</b>	means the Data Protection Act 1998, any applicable statutory or regulatory provisions and all European Directives and regulations in force from time to time relating to the protection and transfer of personal data;
<b>"Engagement"</b>	means the engagement or use of the Contractor's services or the services of any Contractor Staff, by the Client or by any third party to whom the Contractor and/or any Contractor Staff have been introduced by the Client under a contract for services;

<b>“Introduction”</b>	means (i) the passing to the Client of a curriculum vitae or information which identifies the Contractor or Contractor Staff or (ii) the Client's interview of a Contractor or Contractor Staff (in person, by telephone or by any other means), following the Client's instruction to the Employment Business to supply a Contractor; or (iii) the supply of a Contractor; and, in any case, which leads to an Engagement of that Contractor or Contractor Staff; and “Introduces” shall be construed accordingly;
<b>“Introduction Fee”</b>	means the fee payable by the Client in accordance with clause 7;
<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;
<b>“Remuneration”</b>	includes fees, bonus and commission earnings, allowances, , all other payments taxable, (and, where applicable, non-taxable) payable to or receivable by the Contractor for services rendered to or on behalf of the Client. Where a company car is provided, a notional amount will be added to the sums paid to the Contractor in order to calculate the Employment Business' fee.

- 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 Schedules (“**Agreement**”) constitutes the contract between the Employment Business and the Client for the supply of the Contractor Services by the Employment Business to the Client, and is deemed to be accepted by the Client by virtue of its request for, interview with, or Engagement of a Contractor or the passing of any information about the Contractor to any third party following an Introduction.
- 2.2. This Agreement contains the entire agreement between the Parties and unless otherwise agreed in writing, the Employment Business shall prevail over any terms of business or purchase conditions (or similar) put forward by the Client.
- 2.3. Subject to clause 5.2 no variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between the Employment Business and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.
- 2.4. The Client acknowledges that the Contractor and the Contractor Staff carrying out the Assignment have opted out of the Conduct Regulations and further that any person to whom the performance of the Contractor Services has been assigned or sub-contracted has opted out of the Conduct Regulations and that none of the Conduct Regulations apply to any Assignments governed by this Agreement.
- 2.5. The Client acknowledges that the Contractor may supply any of the Contractor Staff to perform the Contractor Services and where the Contractor is unable to provide any part of the Contractor Services for whatever reason the Contractor shall be entitled to assign or sub-contract the performance of the Contractor. The Employment Business and the Client retain the right to reject any such assignment or subcontract if in the reasonable opinion of the Employment Business or the Client the subcontractor or assignee does not have the required skills, qualifications, resources and personnel to provide the Contractor Services to the required standard.

## 3. INFORMATION TO BE PROVIDED

- 3.1 Prior to the commencement of the Assignment, or if this is not practical, upon commencement of the Assignment, the Employment Business will send to the Client the information required to satisfy the client

that contractor has the qualifications / skill sets to complete the assignment. This will be done in the form of a fully completed profile of the supplied contractor.

#### **4. VERIFICATION OF EXECUTION OF THE CONTRACTOR SERVICES**

- 4.1. At the end of each week of the Assignment (or at the end of the Assignment where the Assignment is for a period of less than 1 week or is completed or finished before the end of a week) the Client shall verify the execution of the Contractor Services by signature of a form provided to the Client for this purpose.
- 4.2. Verification by the Client of the execution of the Contractor Services constitutes acceptance by the Client that the Contractor Services have been provided satisfactorily and in accordance with this Agreement. Failure to verify execution in writing does not affect the Client's obligation to pay the Charges in respect of the work done. In the event that the Client is dissatisfied with the work performed by the Contractor the provisions of clause 8 below shall apply.

#### **5. CHARGES**

- 5.1. The Client agrees to pay the Charges to the employment business set out in the current quotation.
- 5.2. The Employment Business reserves the right to vary the Charges agreed with the Client, by giving written notice to the Client, in order to comply with any additional liability imposed by statute or other legal requirement or entitlement.
- 5.3. The Charges are invoiced to the Client on a weekly basis and are payable within 30 days of the month end.
- 5.4. The Employment Business reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.
- 5.5. The Client's obligations under this clause 5 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.

#### **6. PAYING THE CONTRACTOR**

- 6.1 The Employment Business is responsible for paying the Contractor Fees.

#### **7. INTRODUCTION FEES**

- 7.1. The Client shall be liable to pay the Employment Business an Introduction Fee where the Employment Business Introduces the Contractor to the Client and:
  - 7.1.1. the Client Engages the Contractor or any Contractor Staff other than through the Employment Business within a period of 6 months from the termination of the Assignment in respect of which the Contractor or Contractor Staff was supplied, or if there was no supply, within 6 months of the Introduction of the Contractor by the Employment Business to the Client; or
  - 7.1.2. where the Client introduces the Contractor to a third party and such introduction results in an Engagement of the Contractor or any Contractor Staff by the third party other than through the Employment Business within 6 months from the date of the introduction by the Client to the third party.
- 7.2. The Introduction Fee will be calculated at 15% of the Remuneration payable to the Contractor. Where the amount of the Remuneration payable to the Contractor is not known, the Introduction Fee will be calculated by multiplying the weekly charges by 10.
- 7.3. No refund of the Introduction Fee will be paid in the event that the Engagement subsequently terminates.
- 7.4. Clauses 7.2 and 7.3 are individually negotiable between the Employment Business and the Client. Any changes to these clauses must be set out in writing and signed by both parties.

#### **8. TERMINATION OF THE ASSIGNMENT**

- 8.1. The Assignment will terminate when the Client confirms that the Contractor Services have been completed.
- 8.2. Notwithstanding the provisions of clause 8.1 the Client may terminate the Assignment forthwith by notice in writing to the Employment Business where:

- 8.2.1. the Contractor has acted in breach of any statutory or other reasonable rules and regulations applicable to them while providing the Contractor Services; or
  - 8.2.2. the Client reasonably believes that the Contractor has not observed any condition of confidentiality applicable to the Contractor from time to time; or
  - 8.2.3. the Client reasonably considers that the Contractor's provision of the Contractor Services is unsatisfactory.
- 8.3. The Employment Business may terminate an Assignment forthwith by notice in writing if:
- 8.3.1. the Client is in wilful or persistent breach of its obligations under this Agreement and where the breach is capable of being remedied, fails to remedy the breach within 7 days of receiving written notice from the Employment Business to do so; or
  - 8.3.2. the Client fails to pay any amount which is due to the Employment Business in full and on the date that the payment falls due; or
  - 8.3.3. the Client is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; or
  - 8.3.4. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Client; or
  - 8.3.5. an order is made for the winding up of the Client, or where the Client passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation or amalgamation where the resulting entity will assume all the obligations of the other party under this Agreement); or
  - 8.3.6. (where the Client is an individual) the Client dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

## **9. CONFIDENTIALITY AND DATA PROTECTION**

- 9.1 All information relating to a Contractor is confidential and where that information relates to an individual is also subject to the Data Protection Laws and is provided solely for the purpose of providing Contractor Services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times. In addition information relating to the Employment Business' business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 All copyright, trademarks, patents and other intellectual property rights deriving from the provision of the Contractor Services by the Contractor or any third party to whom the Contractor Services are 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 Schedule 1 to this Agreement. Accordingly the Employment Business shall use its reasonable endeavours to ensure that the Contractor shall (and any relevant member of the Contractor Staff shall) execute all such documents and do all such acts in order to give effect to the Client's rights pursuant to this clause.

## **11. LIABILITY**

- 11.1. Whilst reasonable efforts are made by the Employment Business to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from the Contractor and to provide the same in accordance with the Assignment details as provided by the Client, no liability is accepted by the Employment Business for any Losses arising from the failure to provide a Contractor for completion of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Contractor or if the Contractor terminates the Assignment for any reason. For the avoidance of doubt, the Employment Business does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.
- 11.2. For the avoidance of doubt, the Contractor or the Contractor Staff are under the supervision, direction and control of the Client or any person authorised by the client for the duration of any assignment. Furthermore the Client warrants to the Employment Business the following:

11.2.1. The Client or any other person authorised by the client will exercise supervision, direction or control over the manner in which the Contractor Staff carries out their services on behalf of the Client.

11.3. The Client shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Contractor and about any requirements imposed by law or by any professional body, which must be satisfied if the Contractor is to fill the Assignment. The Client will comply in all respects with all relevant statutes, by-laws, codes of practice and legal requirements including the provision of adequate public liability insurance in respect of the Contractor.

11.4. The Client shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business arising out of any Assignment or arising out of any non-compliance with and/or as a result of any breach of this Agreement by the Client.

11.5. The Client will maintain employer and public liability insurances and where the Contractor Staff are required to drive vehicles or operate machinery the Client will hold a comprehensive insurance policy to comply with Road Traffic Acts insurance requirements. The Client will inform insurers that agency Contractor Staff will be treated for insurance purposes as if direct employees of the Client.

## **12. NOTICES**

12.1 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.

## **13. SEVERABILITY**

13.1 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 provisions, which shall continue to be valid to the fullest extent permitted by applicable laws.

## **14. RIGHTS OF THIRD PARTIES**

14.1 None of the provisions of this Agreement are intended to be for the benefit of or enforceable by third parties and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

## **15. GOVERNING LAW AND JURISDICTION**

15.1 This Agreement is governed by the law of England & Wales and is subject to the exclusive jurisdiction of the Courts of England & Wales.