

MORGAN PHILIPS TALENT CONSULTING

Terms of Business

TERMS OF BUSINESS FOR THE PROVISION OF TALENT CONSULTING SERVICES (“the Agreement”)

1. ACCEPTANCE OF TERMS

- 1.1 The following Terms and Conditions of Business (“**Terms**”) shall be deemed to have been agreed and accepted by yourselves (the “**Client**”) upon the confirmation of a Consultancy Assignment (the “**Services**”) in the form of a signed Statement of Work with Morgan Philips UK Limited (“**Morgan Philips UK**”). For the purpose of these Terms, the Client shall include any parent, subsidiary or associated company of the Client, or any successor, whether by reorganisation, merger, sale or otherwise.
- 1.2 Any variation to these Terms must be agreed in writing by an authorised signatory for Morgan Philips UK.

2. CONSULTANCY ASSIGNMENTS

- 2.1 Where Morgan Philips UK is engaged by the Client on a Consultancy Assignment (including Strategic or Human Resource Consultancy, Training, Coaching or Outplacement or any other project-based advice), all fees and project costs will be agreed with the Client in writing. Fees will be charged on an hourly or daily basis.
- 2.2 In respect of any Consultancy Assignment, the total agreed or estimated assignment fee is payable prior to commencement of work.

3. THE SERVICES

- 3.1 Morgan Philips shall provide the Services which shall consist of the screening, assessment or development of personnel as specified in Appendix 1 attached herewith. Morgan Philips shall also provide professional Services for the purpose/s of enabling the Client to implement any products supplied by Morgan Philips to the Client in a separate agreement to this one. The Services shall be performed in accordance with the terms of this Agreement, good industry practice, and all applicable laws, including but not limited to all anti-discrimination, privacy and data protection laws.

4. CLIENT’S OBLIGATIONS IN RESPECT OF THE SERVICES

- 4.1 The Client shall be responsible for ensuring the accuracy of the Input Material and providing it to Morgan Philips in a timely manner, together with all such assistance necessary for Morgan Philips to deliver the Products or Services in accordance with the provisions contained within this Agreement and any attachments thereof including Appendices.
- 4.2 The Client shall not, for the duration of this Agreement and for a period of 12 months following the termination of this Agreement, directly or indirectly (including through any other person, firm or company) approach, solicit, or entice the Consultant or any Morgan Philips employee with whom the Client has contact pursuant to this Agreement, to become employed or engaged by the Client under a contract of service or contract for services or to provide services to the Client through a third party.
- 4.3 The Client will comply with all legislation applicable to its receipt of the Services including all relevant privacy, anti-discrimination and Data Protection laws and/or regulations.

5. CHARGES

- 5.1 The Client will pay an amount for the Services as specified in Appendix 1.
- 5.2 Unless agreed otherwise between the Parties all amounts due under this Agreement will be payable within 30 days of the date of invoice.
- 5.3 The Client will reimburse Morgan Philips for all reasonable expenses incurred by Morgan Philips in providing Services, including travel, travel time and accommodation, venue hire and advertising, where applicable. All

expenses will be reasonably and properly incurred by Morgan Philips and shall be charged at cost and supported by valid receipts.

- 5.4 The Charges and all other sums payable under this Agreement are quoted exclusive of any Value Added Tax, which shall be payable by the Client, where applicable.
- 5.5 If the Client fails to make payment by the due date, without prejudice to any other right or remedy available to Morgan Philips, Morgan Philips shall be entitled to suspend the provision of the Services and charge the Client interest on the amount unpaid (both before and after any judgment) at the rate of 5% over LIBOR.

6. CONFIDENTIALITY

- 6.1 Each Party agrees and undertakes that during the term of this Agreement and thereafter it will keep confidential and will not, without prior written consent of the other Party, use for its own benefit or purpose or the benefit or purpose of a third party or disclose to any third party any information of a confidential nature (including any trade secrets and information of commercial value) which may become known to that Party by virtue of this Agreement, unless such information is in the public domain (other than by breach of this Agreement) or the information is required to be disclosed by law, or disclosure is to a professional adviser who is subject to a duty of confidence.
- 6.2 Neither Morgan Philips nor the Client shall use the other Party's name nor refer to the other Party directly or indirectly in any advertisement or other publication without receiving the other Party's written approval.
- 6.3 The Client acknowledges that where the Services involve End-users disclosing confidential and personal information to the Consultants the Client is not entitled to access such information under this Agreement.
- 6.4 Both Morgan Philips and the Client shall procure the compliance of their respective employees/agents/servants/contractors with the obligations contained in this Clause 5.

7. LIABILITY

- 7.1 Morgan Philips shall not be liable to the Client for any losses and/or damages where:
 - 7.1.1 such loss, liability, damages, costs, claims or expenses arise from, or are contributed to by, any negligent act and/or omission of the Client, wilful default, criminal recklessness of the Client and/or of the Client's employees/agents/servants/ contractors;
 - 7.1.2 the Consultant has carried out instructions given by or on behalf of the Client, its employees or agents or the Client, its employees or agents have failed to adequately supervise the activities of the Consultant where such supervision should reasonably be provided by the Client.
- 7.2 Nothing in this Agreement shall exclude or in any way limit either Party's liability for death or personal injury caused by its negligence, or any other liability to the extent such liability may not be excluded or limited as a matter of law.
- 7.3 Subject to clauses 7.1 and 7.2 above, Morgan Philips shall not be liable for any loss, damage, claims, actions or expenses incurred by the Client arising out of or in connection with the Services.
- 7.4 Neither Party will be liable to the other for any loss of actual or anticipated income or profits, loss of contracts or for any special, indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.
- 7.5 The entire liability of Morgan Philips to the Client in each case arising from or in connection with this Agreement however caused shall be limited to direct damages not to exceed in the aggregate for all claims and actions the value of the Services provided. The entire liability of the Client to Morgan Philips for any

breach of the Agreement shall be limited to any outstanding Charges due from the Client to Morgan Philips for the unexpired term of the Agreement as well as any direct damages relating to the costs incurred by Morgan Philips in remedying any breach.

- 7.6 Morgan Philips shall have no liability, howsoever arising, to the Client in connection with its use of the Services for any purpose other than the “Permitted Purpose” (see clause 10.1) and if any claim is brought against Morgan Philips by a third party arising out of or in connection with the Client’s use of the Services other than for the intended purpose, the Client shall indemnify and keep Morgan Philips fully indemnified for and against all loss, damages, demands, costs (including legal and professional expenses) and liabilities awarded against or incurred by Morgan Philips in connection with such claim.

8. TERM AND TERMINATION

- 8.1 The Term of this Agreement shall commence from the date of signing of this Agreement by the Parties.
- 8.2 Morgan Philips may terminate this Agreement forthwith if the Charges remain unpaid by the Client for thirty (30) days after the date of invoice.
- 8.3 Either Party may terminate this Agreement forthwith if:
- 8.3.1 the other Party commits a material breach of any term of this Agreement and, if the breach is capable of being remedied is not remedied within 10 working days of the date of written notice to remedy the same;
- 8.3.2 either one of the Parties has entered into or is about to enter into an arrangement with its creditors, is in or is about to go into liquidation, receivership or insolvency.
- 8.4 Notwithstanding the provisions of sub-clause 8.3 above, either Party may terminate this Agreement at any time by giving three (3) months’ written notice to terminate to the other Party.
- 8.5 Where as a result of a Force Majeure event one party is unable to fulfil its obligations under this Agreement to the other party for a continuous period of three (3) months from the date of occurrence of the Force Majeure event, either Party may terminate the Agreement.
- 8.6 Termination shall be without prejudice to any other rights or remedies a Party may be entitled to pursuant to this Agreement or at law and shall not affect any accrued rights or liabilities of either Party nor the coming into force or continuation in force of any provision hereof which is expressly intended to come into force or continue in force on or after termination.
- 8.7 Upon completion of the Services or termination of this Agreement for whatever reason, the Client shall cease using the On-line and/or Off-line application/s and both Parties shall deliver up to the other all of the property and copies thereof in its possession, power, custody or control which belong to the other.

9. RECORDS RETENTION

- 9.1 Each Party shall maintain records relating to the Services and Charges in accordance with generally accepted accounting and business practices.

10. RIGHTS IN INPUT MATERIAL AND OUTPUT MATERIAL

- 10.1 The property and any copyright or other intellectual property rights in any Input Material shall belong to the Client and in any Output Material shall belong to Morgan Philips, subject only to the right of the Client to use the Output Material for the purpose of receiving the full benefit of the Services (“the Permitted Purpose”).
- 10.2 The Client warrants that Morgan Philips’s use of the Input Material in the provision of the Services shall not: (i) infringe a third party’s copyright, patent, trademark, trade secret or other legal rights; (ii) shall not violate any law, statute, ordinance or regulation; and (iii) that, where provided in soft copy, the Input Materials shall

not contain any viruses, trojan horses, worms, time bombs or like device that may damage, interfere with, intercept or expropriate any property of Morgan Philips.

- 10.3 Morgan Philips shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising out of or in connection with any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, or arising from their late arrival or non-arrival, or any other fault of the Client.
- 10.4 Morgan Philips warrants that the Client's use of the Output Material for purposes contemplated by this Agreement shall not: (i) infringe a third party's copyright, patent, trademark, trade secret or other legal rights; (ii) shall not violate any law, statute, ordinance or regulation and (iii) that, where provided in soft copy, the Output Material shall not contain any viruses, trojan horses, worms, time bombs or like device that may damage, interfere with, intercept or expropriate any property of the Client. Morgan Philips shall indemnify the Client against any loss, damages, costs, expenses or other claims arising from the Client's use of the Output Materials for the Permitted Purpose.

11. GENERAL

- 11.1 The Agreement constitutes the entire agreement between the Parties and supersedes any previous agreement or understanding. The Client agrees that in entering into this Agreement it has not relied on any oral representation or claim not reflected herein.
- 11.2 This Agreement may be varied upon agreement in writing between the authorised representatives of the Parties.
- 11.3 The complete or partial invalidity of or unenforceability of any provision of this Agreement for any purpose shall in no way affect the validity or enforceability of such provision for any other purpose or the remaining provisions. Any such provision shall be deemed to be severed for that purpose subject to such consequential modification as may be necessary for the purpose of such severance.
- 11.4 Any notice required or permitted to be given by either Party to the other under this Agreement shall be addressed in writing to the other Party at its registered office or such other address as may at the relevant time have been notified pursuant to this provision to the Party giving the notice. Where a notice is sent by fax the other Party shall be deemed to have received the same on that day but where the notice is sent by registered or recorded mail then such notice shall be deemed to have been received two (2) working days from the date of posting.
- 11.5 No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of any breach of the Agreement by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.6 Notwithstanding any existing obligations and/or liabilities as between the Parties at the date of termination neither shall be liable for any failure to perform its obligations if a failure on the part of a Party hereof arises directly from Force Majeure.
- 11.7 Where a Force Majeure event occurs the time for performance of each Party's obligations under this Agreement shall be extended by the period of time during which the Force Majeure event is present. The Parties shall as soon as possible enter into discussion to try to agree a procedure for alleviating any disruption caused by the Force Majeure event. If a Force Majeure event shall subsist for a continuous period of three (3) months and suitable alternative arrangements have not been made, then either Party shall be entitled to terminate this Agreement immediately by notice in writing.
- 11.8 Except as specified in this Agreement, neither Morgan Philips nor the Client shall, without the prior written consent of the other, assign or subcontract the whole or any part of this Agreement.
- 11.9 The relationship of the Client and each of Morgan Philips and the Consultant with respect to this Agreement

is that of independent contractor. This Agreement does not create any relationship or partnership, employment or agency between the Client and either of Morgan Philips or the Consultant.

- 11.10 Nothing in this Agreement is intended to confer any rights, benefits, remedies, obligations or liability on any person (including without limitation any employees/agents/servants/contractors of the respective Parties) other than the Parties or their respective successors or permitted assigns.
- 11.11 This Agreement shall be governed by English law and subject to the exclusive jurisdiction of the courts of England and Wales.

12. INTERPRETATION

- 12.1 In these Terms and Conditions of Service:

‘AGREEMENT’	Means these Terms and Conditions along with any Appendices attached herewith.
‘CLIENT’	Means the person, firm or corporate body named in the Agreement together with any subsidiary or associated company to whom the Services are provided by Morgan Philips.
‘CHARGES’	Means the fee stated in the Agreement in respect of the Services and any expenses incurred under the Agreement.
‘CONSULTANT’	Means any suitably qualified person either employed by Morgan Philips or engaged under a contract for services who delivers the Services, whether in whole or in part.
‘DOCUMENT’	Includes, in addition to a document in writing, any plan, graph, drawing or photograph, any film, negative, tape or other device embodying visual images and any disc, tape or other device embodying any other data, and any material capable of protection under copyright, trademark and other laws.
‘FORCE MAJEURE’	Means any event/ occurrence/ incident which arises outside the reasonable control and/or beyond the reasonable foresight of one of the Parties and which causes delay/breach/non-performance in respect of that Party’s obligations under this Agreement and includes without limitation climatic and/or natural disasters, wars, such industrial activity as strikes and/or lock-outs, riots, civil disturbances, any changes in the legislation/regulations/ directives/bye-laws relevant to and affecting this Agreement.
‘INPUT MATERIAL’	Means any documents, data or information provided by the Client to Morgan Philips in connection with the Services.
‘MORGAN PHILIPS’	Means Morgan Philips Global Resources Limited.
‘OUTPUT MATERIAL’	Means any document, data or information provided by Morgan Philips to the Client in connection with the Services.
‘PARTY’	Means either Morgan Philips or the Client.
‘PARTIES’	Means Morgan Philips and the Client collectively.
‘PERSONNEL’	Means employees of the Client.

‘SERVICES’ Means the services described in detail in Appendix 1.

‘TALENT CONSULTING’ Means the processes for the selection of candidates from applicants for Client job roles, the engagement, retention and management of personnel employed, engaged or hired by the Client as well as the development and shaping of the potential for career progression and advancement among such personnel.

12.2 The headings in the Agreement are for convenience only and shall not affect their interpretation.

12.3 All references to a statute, statutory instrument, regulation or order shall be construed as reference to such statute, statutory instrument, regulation or order, as amended or re-enacted from time to time.

APPENDIX 1 : Statement of Work