

1. Definitions

1.1 In this Agreement, the following definitions shall apply:

Candidate	The person introduced/re-introduced by the Company to the Client for an Engagement .
Client	The person, firm, company or corporate body to whom the Candidate is introduced.
Candidate Information	Details concerning the Candidate (including information that identifies the Candidate as an individual) and relating to Introductions or otherwise, including but not limited to summary profiles, CVs and applications relating to an Engagement.
Company	Business Aviation Services Ltd, 57, Massimilano Debono Street, Lija, LJA 1930, Malta.
Data Protection Laws	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC with national implementations as applicable ('GDPR') and Chapter 586 of the Laws of Malta ('MDPA') including any subsidiary legislation issued thereunder (as may be amended from time to time) and also, where applicable, the guidance and codes of practice issued by any relevant Supervisory Authority or similar authoritative entity. The definitions and interpretations in the Data Protection Laws apply to these Terms of Business.
Engagement	The engagement, employment or hiring of the Candidate by the Client or a Third Party pursuant to these Terms of Business directly or indirectly or the utilisation of their services by or on behalf of the Client on a permanent or temporary basis, whether under a definite or indefinite employment contract, part-time or full-time and whether under a contract of service or for services under a Company, licensee, franchise or partnership agreement; or any other engagement.
Introduction	The Company's submission of Candidate Information or the interviewing of Candidates for potential Engagement by the Client, which may or may not result in the Client's Engagement of any such Candidate .
Party	Either the Client or the Company, as the case may be.
Parties	Reference to both the Client and the Company
Placement Fees	The amount payable to the Company as detailed in this Agreement, exclusive of VAT.
Remuneration	The Candidates' annual gross salary with the Client which includes gross salary, allowances, anticipated bonus, commissions, inducement payments, both taxable and non-taxable emoluments paid to or received by the Candidate from the Client.
Third Party/ies	Any person not being the Company to whom the Client passes Candidate Information

NOW THEREFORE THE PARTIES HAVE AGREED AS FOLLOWS:

WHEREAS:

- A. The Client requires the recruitment services offered by the Company with a view to the Client employing one or more suitable Candidates introduced to the Client by the Company;
- B. Since the Parties separately and independently determine the purposes and means of the processing of the personal data pursuant to the Terms of Business, the Parties are deemed to be **separate data controllers** and **not** joint data controllers as understood by Article 26 of the GDPR;
- C. At time of signature of these Terms of Business, neither Party processes personal data *on behalf of* the other Party and neither Party acts as a data processor of the other Party;

2. **General**

- 2.1 All and any business undertaken by the Company in relation to its recruitment services is subject to the conditions set out in this Recruitment Services Agreement (hereinafter 'Terms of Business').
- 2.2 These Terms supersede all previous Terms of Business relating to recruitment services.
- 2.3 These Terms of Business shall remain binding indefinitely. Either Party may however terminate these Terms of Business by providing not less than four (4) weeks written notice.
- 2.4 No variation of these Terms shall be made without the written consent of the Company's Head of Recruitment.

3. **Company Obligations**

- 3.1 The Company will act professionally and ethically in carrying out its recruitment activities.
- 3.2 The Company will use its reasonable endeavours to introduce to the Client a suitable Candidate to fill the role/position specified by the Client.
- 3.3 The Client accepts that no warranty as to the suitability of the Candidate can be given by the Company and, in particular, that the Company cannot guarantee that a suitable Candidate can always be found to fit the role for the purpose/s specified by the Client.

4. **Client Obligations**

- 4.1 To enable the Company to comply with its obligations under these Terms of Business, the Client undertakes to provide the Company with full details and the relevant information of the role/position for which it seeks to fill, including but not limited to: the terms and conditions of employment; engagement start date; any specific/special requirements considered necessary by the Client and; any requirement by law or any professional body that the Candidate must possess in order to work in the position.
- 4.2 The Client will designate a suitably empowered point of contact with the authority to facilitate day-to-day coordination with the Company's Head of Recruitment.
- 4.3 The Client shall satisfy itself as to the suitability of any Candidate for the role/purposes of the vacancy for which the Candidate has been introduced. This shall include taking up references, checking the validity of qualifications, obtaining work or other permits, arranging any medical examinations and performing any other activities that may reasonably be expected of an employer or required by law.
- 4.4 The Client shall notify the Company immediately of any intention to proceed with the Engagement of a Candidate, of any offer of Engagement to a Candidate, including in any such notification the provision to the Company of all details relating to the Engagement, including the date of Engagement, the Remuneration package and any other relevant information. The Client shall also immediately notify the Company of an intention to terminate any such Engagement if such termination occurs within the first three months of employment.
- 4.5 The Client appreciates and agrees that all Candidates introduced by the Company represent significant efforts and expertise in matching suitable Candidates with specifically requested roles/purposes. Therefore, the Client shall not seek to circumvent the Company and shall refrain from conducting direct dealings with the Candidate, including but not limited to any Engagements or Introductions, without the specific prior authorisation (in writing) of the Company.
- 4.6 The Client has solely engaged the Company with the recruitment of a post and as such will not network, employ other agencies or use other means to attract applicants for that post.

5. **Placement Fees**

- 5.1 The Client hereby agrees that in the event of any Engagement of a Candidate put forward by the Company (including the event where the vacancy for the position was not listed with the Company or there was no such vacancy) the fees as documented hereunder shall be due to the Company.
- 5.2 If a Candidate who fits the selection criteria agreed between both parties according to the information provided by the Client in terms of Clause 4 above, is not immediately engaged by the Client but is thereafter subsequently engaged, the Client shall notify the Company of the Engagement and shall be liable to the fees documented hereunder.

- 5.3 The Client confirms that in the event of the Client introducing any Candidate to a Third Party, either directly or indirectly, that results in an Engagement by that Third Party, the Client shall notify the Company of the Engagement and provide the Company with all information necessary for the calculation of the Placement Fee described in clause 5.5 and shall be liable to pay the said Placement Fees.
- 5.4 The Client shall pay the fees due to the Company pursuant to these Terms of Business within 45 days from the date of the invoice. Any late payment may incur interest rates at the Company's discretion until the invoice is settled.
- 5.5 The Placement Fee payable to the Company is fourteen percent (14%) of the Candidate's annual Remuneration or a minimum fee of €2,000 if the fixed rate of 14% should be lower; all fees are exclusive of VAT.
- 5.6 Exclusivity rates are available upon request.
- 5.7 The cost of advertising and artwork is to be agreed separately in writing, with charges payable by the Client irrespective of whether a Candidate is Engaged.
- 5.8 The Company reserves the right to amend their fees, having provided 30 days' notice; ongoing placements will not be affected by any fee changes.
- 5.9 Notwithstanding any termination of this Agreement in terms of Clause of 2.4 above, any fees due for Engagements of a Candidate which were made prior to the termination of Agreement, shall continue to be due and shall survive the termination of this Agreement.

6. Refunds

- 6.1 If the Engagement terminates within the first three (3) months of employment the Company will find a suitable replacement within 30 days, which term shall run from the date upon which Engagement is terminated or refund the Client the Placement Fee.
- 6.2 Clause 6.1 above is null and void should Engagement be terminated due to company restructuring (resulting in redundancy or termination), pregnancy, injury, ill-health or due to any form of discriminatory practice.
- 6.3 This refund will only be applicable if the Client pays the Placement Fee invoice within the stipulated 45-day period as per Clause 5.4.

7. Introductions

- 7.1 The Introduction (or re-introduction) of a Candidate to the Client (or by the Client to a third party) remains valid for a period of twelve (12) months from the date of Introduction or date of last interview, whichever was the latest: Clauses 5.1, 5.2 and 5.3 apply
- 7.2 Where Remuneration is not known then the Company, due to the Client's failure to communicate such information or otherwise, shall charge a fee to the Client in accordance with the minimum level of Remuneration applicable for the position in which the Candidate has been Engaged, taking into consideration any information supplied to the Company by the Client as well as salary benchmarking data.

8. Suitability

- 8.1 The Company will attempt to ensure the suitability of every Candidate introduced to the Client. However, the Client hereby agrees that it is well advised to verify and confirm the suitability of Candidate before considering the Engagement of said Candidate.
- 8.2 Final verification of the Candidate is the responsibility of the Client, the costs associated with such activity falls to the Client. Permission from the Candidate is required before external verification can be undertaken.
- 8.3 The Company shall not be held liable for any loss, expense, damage, delay, costs or compensation (whether direct or indirect) of the Client which arises from or relates in any way to the Introduction or Engagement of any Candidate, including any such loss, expense, damage, delay or costs which are a result of unsuccessful Engagements and/or of any Candidate who are after such Engagement, deemed unsuitable for the role/purpose for which the Candidate was Engaged.

9. Data Protection

9.1. Obligations On Both Parties As Separate Data Controllers

- 9.1.1 On the basis of preambles B and C above, which each Party acknowledges to be accurate, each Party shall, independently, and acting as a separate data controller, ensure that any personal data that it may process in its own capacity (as a separate data controller) shall be processed in full compliance with its own respective legal obligations, including full compliance with the Data Protection Laws.
- 9.1.2 Each Party shall provide reasonable assistance, information and co-operation as regards data protection matters where requested by the other Party in respect of personal data shared or held in common between them pursuant to any agreements in force between the Parties.

9.2 Specific Obligations Prior To Sharing Or Disclosing Personal Data

- 9.2.1 Each Party independently undertakes that prior to sharing or disclosing any personal data pursuant to the Terms of Business (the 'Disclosing Party') with or to the other Party (the 'Receiving Party') the Disclosing Party shall, to the best of its abilities, ensure that any such personal data it is responsible for have been collected or otherwise processed lawfully and are only shared with or disclosed to the Receiving Party as necessary and in a manner that is in full compliance with Data Protection Laws, and in particular, that:
- i) No consent or other authorisation for sharing the personal data with the Receiving Party is required OR that in those cases where consent is required for such disclosure, consent has, in fact, been obtained by the Disclosing Party in full compliance with the Data Protection Laws;
 - ii) That, in any case, an appropriate legal basis for processing (for example, consent, contractual necessity or legitimate interests) has been correctly identified and will be relied on; and
 - iii) That any and/or all information required by the Data Protection Laws to be provided to the data subject(s) prior to any such sharing with or disclosure to the Receiving Party of any such personal data (in particular Article 13, GDPR), has in fact been provided.
- 9.2.2 For the avoidance of all doubt, the Receiving Party, acknowledges that it shall, in turn comply with any and/or all similar obligations imposed on it by the Data Protection Laws once the personal data have been shared with or disclosed to it (including, in those cases where the Receiving Party acts as an employer [or prospective employer] of the Candidate, the provision of all required information to data subjects as required by Article 14, GDPR).
- 9.2.3 For the avoidance of all doubt, compliance with the Data Protection Laws in terms of the Candidate's employment with the Client as well as compliance with any related laws (including, but not limited to employment laws) shall be the sole responsibility of the Client.

9.3 Obligations Should Status Quo Change

- 9.3.1 The Parties agree that should processing of personal data by either Party *in the capacity of data processor* on behalf of the other Party (in the role of data controller) be required, the Parties shall enter into an appropriate data processing contract or other written legal instrument containing all necessary obligations to regulate such processing of personal data including but not limited to the obligations stipulated in Article 28 of the GDPR.
- 9.3.2 The Parties also acknowledge that should the position described in these Terms of Business change at any time in the future but not to the situation contemplated under Clause 9.3.1 above (namely where one Party shall act as a data controller and the other Party shall act as a data processor), the Parties shall carefully evaluate the situation and determine whether any separate data processing agreement or other similar arrangement between the Parties may be required (for example, in the case of joint controllership as per Article 26 of the GDPR) and if so, execute the same accordingly.

10. Confidentiality

- 10.1 The terms and conditions of this Agreement are deemed confidential, as is the exchange of all forms of information between Company and Client.
- 10.2 Any information given to the Client by the Company about a Candidate will be considered confidential and is not to be divulged to any third party for any purpose other than that for which it had first been provided, except with the consent of the Candidate or as otherwise permitted or mandated by any applicable law and in accordance with Clause 10.4 hereunder.
- 10.3 Both Parties hereby declare not to use, copy or reproduce any confidential material except as is reasonably necessary for performing its obligations or conducting business under or in connection with these Terms of Business.

- 10.4 Where either Party is required by law to disclose such confidential information then such Party should consult and inform the other Party.
- 10.5 Each Party will accept full liability and will indemnify the other Party against any loss or damage, sustained or incurred, as a result of any breach of confidentiality.
- 10.6 Any document created during the provision of our services and any intellectual property rights related thereto shall remain the property of the Company.

11. Liability & Severability

- 11.1 The Company shall not be liable under any circumstances for any loss, expense, damage, delay, costs or compensation (whether direct or indirect or consequential) which may be suffered or incurred by the Client arising from or in any way connected with the Company seeking a Candidate for the Client or from the Introduction/re-introduction to, or Engagement of, any Candidate by the Client or from the failure of the Company to introduce any Candidate.
- 11.2 Neither Party shall do anything or permit anything to be done, through any act or omission, that would cause the other Party to incur any liability under the Data Protection Laws.
- 11.3 Each Party shall hold harmless and indemnify and keep indemnified the other Party from and against all data protection losses (including but not limited to, regulatory fines and penalties) suffered or incurred by, awarded against or agreed to be paid by the relevant Party, arising from or in connection with any breach by the relevant Party (or any agent, employee or sub contractor of the relevant Party carrying out processing of personal data) of these Terms of Business and/or the Data Protection Laws.
- 11.4 If any term or provision in this Agreement (or any part of such Agreement or provision) shall be held by any court or tribunal of competent jurisdiction to be unenforceable, under any enactment or rule of law, such term or provision or part thereof shall to that extent be deemed severable and not to form part of the Agreement, but the validity and enforceability of the remainder of the Agreement shall not be affected.

12. Governing Law

- 12.1 This Agreement is made in, governed by and subject to the Laws of Malta.
- 12.2 Parties agree that any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, which cannot be settled amicably shall be settled by the Malta Arbitration Centre in accordance with the Arbitration Act (Cap. 387) of the laws of Malta.

13. Client Details

Client Name		Client Registration Number	
Address		VAT Number	
Name of POC		Position of POC	
Date		Signature	

14. Company Details

Name	J H Cranmer	Position	Head of Recruitment
Date		Signature	