

## 1. Definitions

“**Agreement**” means the agreement between ECA and the Client for the carrying out by ECA of and payment by the Client for the Proposal.

“**Client**” means the recipient of the ECA Consulting Services.

“**Conditions**” means the terms and conditions referred to herein.

“**Data Protection Legislation**” means any applicable data protection legislation, privacy legislation or any other legislation governing the use of personally identifiable information which applies to the parties, including any sub-ordinate legislation, regulation or guidance issued by the relevant authority responsible for data protection and/or privacy.

“**ECA**” means Employment Conditions Abroad Limited (company no. 1030127) trading as ECA International whose registered office is at New Brook Buildings, 16 Great Queen Street, London WC2B 5DG, U.K.

“**ECA Consulting Services**” means the consulting services including the ECA Information and the Enquiry Services provided by ECA pursuant to these Conditions.

“**ECA Information**” means all information (including data, reports, advice, training sessions, etc.) provided by or on behalf of ECA to the Client in any form whatsoever including electronically.

“**Enquiry Services**” means the services provided as set out in Clause 6.

“**Fees**” means the charges set out in the Proposal for the ECA Consulting Services or any part thereof and/or any other services provided by ECA from time to time.

“**Force Majeure Event**” has the meaning set out in Clause 8.

“**Intellectual Property**” means any patents, trade marks, service marks, domain names, registered designs, utility models, design rights, moral rights, topography rights, rights in databases, copyrights and related rights, confidential information, inventions, trade secrets, the sui generis rights of extraction relating to databases, know-how, goodwill, business or trade names, get up, and all other intellectual property in any part of the world (whether or not registered or capable of registration) and all applications and rights to apply for and be granted, renewals or extensions of and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist now or will subsist now or in the future.

“**Legislative Change**” means any change to applicable law as at the date of this Agreement.

“**Proposal**” means the ECA Consulting Services and Fees that have been agreed and accepted by the Client.

References to **Clauses** are to clauses in these Conditions.

References to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, applied, extended or re-enacted.

## 2. Basis of Contract

The ECA Consulting Services are provided in accordance with the Proposal and subject to these Conditions to the exclusion of all other terms and conditions including those contained in any purchase order documentation the Client supplies as part of its payment process. The Client's written approval of the Proposal shall constitute its acceptance of the Fees and these Conditions and its entry into this Agreement. The Client warrants that it is entering into these Conditions as a business or other organisation (and not as a consumer) and has due capacity and authority to do so.

## 3. Services Offered

The ECA Consulting Service shall be as described in the Proposal, and will commence on receipt of the Client's written approval of the Proposal (or as specified in the Proposal, if later). ECA will deliver the ECA Information and send an invoice to the Client in accordance with the Proposal. Invoices shall be due and payable in accordance with Clause 4.

## 4. Fees & Payment

Fees shall be payable on receipt of invoice or in accordance with the payment schedule set out in the Proposal. Fees cannot be refunded. All Fees shall be remitted to ECA in full and without deduction or

withholding and the Client shall be liable for all taxes (including withholding, sales, use, stamp, value added, turnover, import and duty or other similar taxes, levies, charges and assessments imposed with respect to such amounts) payable thereon. To the extent that ECA is obliged to make payment of any of the foregoing, the Client shall reimburse ECA on demand, and upon the failure of the Client to so reimburse ECA, ECA shall have all of the remedies provided by law for the collection of unpaid Fees. Notwithstanding Clause 10, ECA reserves the right to charge interest on any overdue amount from the date on which payment had been due to the date on which payment is received at the rate of 4% above the Bank of England's base rate.

## 5. Intellectual Property, Use of the ECA Information & Confidentiality

All Intellectual Property rights in and to the ECA Information (including any data and tables derived from the ECA Information) provided to the Client in whatever form shall vest wholly in ECA and the Client acknowledges and agrees that it has no right, title or interest in or to any such ECA Information. The Client will do and/or procure the doing of all acts and things and execute or procure the execution of all such documents as ECA considers necessary or desirable to give effect to this Clause 5.

For the duration of the project set out in the Proposal, ECA hereby grants to the Client a non-exclusive, non-transferable, non-sublicensable, revocable licence to use ECA's Intellectual Property solely as necessary for the Client to obtain the commercial benefit of the ECA Consulting Services solely for its own business purposes and wholly in accordance with these Conditions (which shall not include allowing the use of ECA's Intellectual Property by, or for the benefit of, any person other than an employee of the Client). In particular, the Client shall not use the ECA Information for any purpose which conflicts with ECA's own commercial purpose, including the provision of the ECA Information or any advisory service based on the ECA Information to any third party outside of the Client. For the avoidance of doubt, this restriction shall apply equally to the ECA Information and any data or tables derived from the ECA Information.

For the avoidance of doubt, the Client has no right (and shall not permit any third party) to (i) copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to any software forming part of the ECA Information in whole or in part except to the extent that any reduction of such software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of such software with the operation of other software or systems used by the Client, and the Client shall request ECA to carry out such action before undertaking any such reduction, or (ii) have access to any software forming part of the ECA Information in source code form other than as expressly provided in these Conditions.

The Client shall ensure that all ECA Information are kept securely and confidentially and shall not be copied, reproduced or published by the Client (other than for its own internal business purposes) without ECA's prior written consent. The Client shall ensure that no third party shall have access to or use the ECA Information and/or the ECA Consulting Services without the prior written consent of ECA.

## 6. Enquiry Services

ECA will use reasonable endeavours to answer by email or telephone any reasonable enquiry from the Client concerning work in progress and work delivered under the Proposal. ECA reserves the right to charge a Fee for any such enquiries on a time-cost basis in accordance with ECA's standard rate card and will be invoiced and are payable in accordance with Clause 4.

## 7. Provision of Information to ECA and Data Protection

From time to time, ECA may ask the Client for information relating to its assignee management practices, its assignees' terms and conditions and any other relevant information or experience it may have. The Client is under no obligation to provide any such information, but if it chooses to do so, it shall be provided at no cost to ECA and may be used by ECA on an anonymised basis as part of its services.

Unless the Client is party to a Hosting Agreement with ECA, in which case the provisions of such Hosting Agreement will prevail in respect of personal data provided to ECA by the Client, and save where any personal data is submitted directly by individuals to ECA via ECA's website, the Client hereby warrants and represents that it will not at any time provide to ECA any personal data or personally identifiable information (as such terms are defined in Data Protection Legislation). The Client shall indemnify and keep indemnified ECA against any and all costs, claims, fines, group actions, damages or expenses incurred by ECA or for which ECA may become liable as a result of the Client's breach of this Clause 7.

#### **8. Exclusion of Liability**

Nothing shall limit or exclude either party's liability to the other for (i) fraudulent acts by itself or its employees; (ii) any death and/or personal injury caused by its negligence; or (iii) any matter which is not capable of being limited or excluded by law.

Both parties agree to take all reasonable care to ensure that any information supplied to one another, including the ECA Information, is accurate. Notwithstanding the above, both parties acknowledge and agree that all information, including the ECA Information, is provided on an "as is" basis.

Without prejudice to Clause 7, neither party shall have any contract, tort or other liability to the other for any direct or indirect loss or damage as a result of any information which it receives being incorrect, or for any failure to notify the recipient of any change in circumstances which renders information which was correct when given, incorrect at a later date.

ECA shall have no liability for any other indirect or consequential losses including loss of profit. In no event shall ECA's liability (in contract, tort or otherwise) exceed 100% of the Fees at the time of the relevant breach of these Conditions.

ECA shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labour disputes, embargoes, government orders, Legislative Change which affects ECA's ability to provide the ECA Consulting Services or any other force majeure events (each a "**Force Majeure Event**"). If a Force Majeure Event persists for a period of 7 days or more, ECA shall be entitled to terminate this Agreement immediately and without additional liability.

#### **9. Notice**

Any notice or other communication pursuant to this Agreement must be served in writing and must be sent by recorded delivery post or delivered via email (provided that a 'read receipt' confirmation is received). Any notices to ECA must be sent to the lead consultant with a copy to the Head of Consulting at ECA's Head Office in London.

#### **10. Suspension and Termination**

ECA reserves the right to suspend the ECA Consulting Services without notice in the event that Fees remain outstanding for more than 60 (sixty) days beyond their due date. ECA will use reasonable endeavours to give the Client at least 7 (seven) days' prior notice of any such suspension. ECA will resume the ECA Consulting Services as soon as practicable after payment has been received in full. No refund or credit will be given for any period of suspension. In the event that the Proposal includes delivery deadlines, the deadlines shall be extended by a period equal to the period of any suspension. All other Conditions of this Agreement (including for the avoidance of doubt the Term) will remain in full force and effect.

ECA may terminate, cancel any or all of the ECA Consulting Services and access to the ECA Information provided under the Proposal without notice and without liability in the event of the Client's breach of any of the Conditions by the Client and/or in the event of the Client's insolvency, appointment of an administrator or any such equivalent action. ECA may also terminate, cancel or amend the Proposal if the agreed scope or time frames are changed.

Upon termination, the Client shall immediately pay all outstanding monies owed to ECA for ECA Consulting Services or other work completed or services provided to that date.

Clauses 8 to 12 shall survive the termination of this Agreement for any reason.

#### **11. General**

**Variation:** ECA reserves the right to vary these Conditions upon reasonable notice to the Client. If the Client does not agree to the relevant variation, it shall have the right to terminate this Agreement upon 7 days' written notice to ECA whereupon Fees for all Consulting Services already provided shall be immediately due and payable.

Notwithstanding the above, ECA reserves the right to vary the range or details of any other services which it offers from time to time without prior notice.

**Waiver:** No waiver by either party hereto of any breach of the terms hereunder shall be construed as a waiver of any subsequent breach of the same or any other provision. Waivers shall only be valid when executed in writing and signed by the waiving party.

**Severability:** If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions shall not be affected. The parties shall co-operate to replace any such provisions.

**Transfer:** The Client may not assign nor transfer any rights or benefits granted to it under these Conditions without the prior written consent of ECA, such consent not to be unreasonably withheld. ECA may assign or transfer any of its rights or benefits under these Conditions in its sole discretion. In the case of a transfer of obligations, the transfer will be effected by a novation such that thereafter this Agreement will be between the assignee (filling the role of ECA) and the Client and the Client agrees to enter into such novation upon request.

**Third Party Beneficiaries:** This agreement does not and is not intended to confer any rights or remedies upon any person other than the parties.

#### **12. Governing Law and Jurisdiction**

This Agreement shall be interpreted and governed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the Courts of England and Wales.