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FREELANCER SERVICE AGREEMENT - NOW PARTLY DRAFTED BY STATUTE

Why a freelancer service agreement unreviewed since 31 March 2026 is partly void by operation of law

Under section 2 of the Gig Workers Act, 2025 ("**GWA**"), a "service agreement" means any agreement, whether orally or in writing and whether express or implied, between a contracting entity and a gig worker who provides a service in Malaysia in exchange for earnings, but does not include a 'contract of service' as defined under the Employment Act, 1955 or a 'contract of employment' as defined under the Industrial Relations Act, 1967 ("**IRA**").

The exclusion is load-bearing. It is the line that keeps these engagements outside the employee framework while still binding them by statute. Until 31 March 2026, the floor of a freelancer engagement was whatever the parties wrote into the contract — and where they wrote nothing, there was no floor. From 31 March 2026, the GWA supplies that floor by operation of law. The contract still binds; it is no longer the only document that does.

KEY HIGHLIGHTS

- Under section 2 of the Gig Workers Act 2025, a "service agreement" captures any agreement — oral or written, express or implied — between a contracting entity and a gig worker. The label at the top does not exit the contract from the GWA's scope.
- Section 3 requires every service agreement to specify seven terms: parties, period, services, obligations, rate, payment method, and benefits. A contract silent on any of them is now silent against a statutory expectation, not against nothing.
- The Schedule lists nine service categories that catch non-platform corporates today, from acting and filming to translation, journalism, and photography. Section 110 lets the Minister gazette more — the Schedule is a starting position, not a closing one.

HOW THE NINE SECTORS CATCH SMES

Read with section 2(b)(ii) definition of "gig worker", the Schedule lists the nine (9) service categories that bring a non-platform engagement within the Act. The corporate engaging a freelancer falls under the Act only if the service performed is one of these service categories.

The Schedule names by occupation, not by industry. An SME that engages freelance photographers for product shoots, filming crew for brand video, or translators for cross-border collateral is engaging within the Schedule whether or not it thinks of itself as a "creative" business. A beauty corporate engaging make-up artists, hair stylists, or stylists for clinic-day work is engaging within Schedule item 4 by occupation, regardless of where the work is done or how the contract describes the role.

However, the named-occupation drafting cuts both ways. For example, the Schedule names only make-up artist, hair stylist, and stylist under aesthetic services. Facial therapists, massage therapists, and aesthetic treatment specialists are not named. They may arguably fall outside the Schedule today. These engagements remain bargained commercial relationships, governed only by the contract.

Corporates need to be reminded that the position is a snapshot, not a settled state. Section 110 empowers the Minister to expand the Schedule by gazette order. The corporate engaging therapists or copywriters today is engaging outside the Act at present — operating in a planning window but not a permanent exclusion. The planning move thus is to draft the existing template to a standard that would survive a Schedule expansion and not assume the Schedule will hold its current shape.

WHAT YOUR SERVICE AGREEMENT NOW MUST CONTAIN

Section 3 of the GWA requires every service agreement entered into between a contracting entity and a gig worker to specify seven (7) terms: (a) parties to the agreement; (b) period of the agreement; (c) services to be provided by the gig worker; (d) obligations of the parties; (e) rate and details of earnings of the gig worker; (f) method of payment of earnings; and (g) any gig worker's benefits or tip and gratuities, if any.

Six of the seven are standard in any well-drafted service agreement. The seventh, paragraph (g), is conditional. The phrase "if any" makes the term operative only where the contracting entity offers the gig worker a benefit, tip, or gratuity. The service agreement that carries no such offering does not breach section 3 by silence; the service agreement that does carry one, but leaves the page silent on it, has missed a drafting requirement the section triggers.

The framing of section 3 matters as much as its content. The opening words, "shall specify", make this a positive drafting obligation, not a default-if-silent presumption. The contract that omits any of the seven is not relying on commercial silence; it is operating below the statutory drafting standard, whether or not the engagement is otherwise running smoothly.

WHERE YOUR TEMPLATE IS NOW VOID

Section 4 preserves continuity for legacy contracts: a service agreement entered into before 31 March 2026 continues to operate, but it operates subject to the Act's floors. The corporate that signed a freelancer service agreement in 2024 has not been released from it. It has had a statutory layer added on top — and where the contract sits below that layer, the contract gives way.

Three (3) floors land hardest on a typical service agreement.

- Termination without "just cause or excuse". Sections 8(1)(g) and 9(c) require that the termination of a service agreement be supported by "just cause or excuse." A contract that allows either party to terminate at will, on notice, or on the contracting entity's unilateral discretion no longer holds against this floor; the termination still has to clear the statutory standard. The phrase "just cause or excuse"

is the standard that has governed dismissal jurisprudence under section 20 of the IRA for decades. How the Gig Workers Tribunal applies that standard to gig engagements is still to be settled — but the standard itself is not new, and the corporate drafting against it is drafting into established law.

- Payment within seven (7) days. Where the service agreement does not provide for the timing of payment, section 11(1) requires payment within seven days of completion of the service. A corporate template that does not specify payment terms has, by silence, agreed to seven days.
- Deduction without statutory ground. Section 12 restricts the deductions a contracting entity may make from a gig worker's earnings. A standard template clause permitting "set-off, indemnity, or recovery against future invoices" without statutory grounding is constrained by section 12 — the contractual permission does not import a statutory permission.

These three (3) floors do not require the contract to mention the GWA. They operate by force of statute on every service agreement within the GWA's scope, regardless of what the contract says. A service agreement that was sound on 30 March 2026 is partly void on 1 April 2026 without any of its parties signing anything new.

WHERE DISPUTES NOW GO

A dispute between a contracting entity and a gig worker no longer defaults to the contract's chosen forum. The GWA prescribes a four-step chain.

- First - the grievance mechanism under section 17. The gig worker may raise the grievance internally; an unresolved grievance escalates.
- Second - conciliation. Section 18 routes an unresolved grievance to a Conciliator appointed under the Act. The conciliation forum is administrative, not judicial.
- Third - the Gig Workers Tribunal under Part V. Where conciliation fails, the matter goes to the Tribunal for determination. The Tribunal makes awards.
- Fourth - appeal. Section 44 confers a right of appeal to the High Court, exercisable within fourteen days of the Tribunal's award. Fourteen days is the statutory clock. It does not extend on the basis of the contract's longer notice provisions, and it does not pause for inter-party correspondence.

What sharpens the chain is section 45. A contracting entity that fails to comply with a Tribunal award is liable to a fine of up to RM50,000 or imprisonment of up to two (2) years, or both. The award is not a finding the corporate can ignore on the basis that the dispute is "commercial" or that the claim is small. The penalty is the floor under the Tribunal's authority.

For a corporate that has historically resolved freelancer disputes by attrition — slow payment, contested invoices, quiet departure — the chain narrows the room to do so. Each step has a forum, each forum has a clock, and the last forum has a penalty.

PRACTICAL TAKEAWAY

The Gig Workers Act, 2025 is in force; the question for the corporate engaging freelancers in any of the nine (9) Schedule sectors is no longer whether the contract is the document that binds — it is whether the contract is the only document that binds. It is not.

Ask not whether your service agreement names the engaged party correctly — it should — but whether it specifies all seven (7) terms required by section 3, whether it survives the "just cause or excuse" termination floor, and whether it carries an internal grievance route the GWA now expects of incorporated contracting entities. What the contract answers in its own words, the statute leaves alone; what the contract leaves silent, the statute now answers in its place.

All information in this Newsletter is correct as at 19 May 2026 unless otherwise stated.

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