

TERMS AND CONDITIONS FOR THE SUPPLY OF LIMITED COMPANY CONTRACTORS WHO HAVE OPTED OUT OF THE CONDUCT REGULATIONS (OUTSIDE IR35)

YOUR ATTENTION IS BROUGHT TO THE LIMITATIONS OF LIABILITY SET OUT IN CLAUSE 15

1. INTRODUCTION

These Terms relate to the Introduction and supply to you by the Agency of Intermediaries for Assignments.

2. INTERPRETATION

(a) The definitions and rules of interpretation in this clause apply to these Terms.

"AETR" means the European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport of 1st July 1970 (as applicable to such Assignments).

"Agreed Purposes" means the sharing of Agency Worker or Intermediary Staff Personal Data in order for the Client to Engage an Agency Worker or Intermediary Staff for an Assignment and for the Agency to provide the services pursuant to these Terms;

"Agency" means Ignition Driver Recruitment Limited, a company incorporated and registered in England and Wales with company number 15972191 whose registered office is at Stoneleigh And The Coach House, 39/41 Halifax Road, Brighouse, England, HD6 2AQ or under such other trading name or trading styles as the Agency may use from time to time.

"Agency Worker" means any officer, employee, worker or representative of the Intermediary supplied to provide the Intermediary Services which, for the avoidance of doubt, shall include Mobile Workers.

"Applicable Laws" means the laws of England and Wales and the European Union and any other laws and regulatory policies, guidelines or industry codes which apply to these Terms.

"Assignment" means the Intermediary Services to be performed by the Agency Worker for the Client for a period of time during which the Intermediary is supplied by the Agency to provide the Intermediary Services to the Client.

"Assignment Details Form" means the written confirmation of the assignment details agreed with the Client prior to the commencement of the Assignment.

"Automatic Enrolment" means workplace pension schemes as particularly described in the Pensions Act 2008 (as amended).

"AWR" means the AWR 2010.

"AWR Claim" means any complaint or claim to a tribunal or court made by or on behalf of an Agency Worker against the Client or the Agency.

"Calendar Week" means any period of seven days starting with the same day as the first day of the First Assignment.

"Charges" means the charges as notified to the Client at the commencement of the Assignment and which may be varied by the Agency from time to time during the Assignment and as set out further in clause 8. The Charges are comprised of the Intermediary's fees, the Agency's commission or other expenses or disbursements as may have been agreed with the Client or, if there is no such agreement, such expenses or disbursements as are reasonable.

"Client" means the person, firm or corporate body to whom the Agency Worker 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 Intermediary is Introduced.

"Client's Group" means (a) any individual, company, partnership, statutory body or other entity which from time to time Controls the Client, including (but not limited to) as a holding company as defined in section 1159 of the Companies Act 2006; and (b) any company, partnership, statutory body or other entity which from time to time is Controlled by or is under common Control with the Client, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006.

"Confidential Information" means the any and all confidential commercial, financial, marketing, technical or other information or data of whatever nature relating to the Client or Agency or their business or affairs (including but not limited to these Terms, data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information concerning the Assignment) in any form or medium whether disclosed or granted access to whether

in writing, orally or by any other means, provided to the Agency Worker or any third party in relation to the Assignment by the Client or the Agency or by a third party on behalf of the Client whether before or after the date of these Terms together with any reproductions of such information in any form or medium or any part(s) of such information;

"Comparable Employee" means as defined in Regulation 5(4) of the AWR being an employee of the Client who: (a) works for and under the supervision of the Client and is engaged in the same or broadly similar work as the Agency Worker having regard, where relevant, to whether the employee and the Agency Worker have a similar level of qualification and skill; and (b) works or is based at the same establishment as the Agency Worker or, where there is no comparable employee working or based at that establishment who satisfies the requirements of (a) above, works or is based at a different establishment and satisfies those requirements.

"Conduct Regulations" means the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

"Control" means (a) the legal or beneficial ownership, directly or indirectly, of more than 50% of the issued share capital or similar right of ownership; or (b) the power to direct or cause the direction of the affairs and/or general management of the company, partnership, statutory body or other entity in question, whether through the ownership of voting capital, by contract or otherwise, and "Controls" and "Controlled" shall be construed accordingly.

"Data Protection Legislation" (i) means the Data Protection Act 1998, until the effective date of its repeal, (ii) the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK; and (iii) any successor legislation to the Data Protection Act 1998 and the GDPR, in particular the Data Protection Bill 2017-2019, once it becomes law.

"Driving Legislation" means the Transport Act 1968, the AETR, the Road Transport (Working Time) Regulations and the EU Drivers' Hours Regulation (as applicable to such Assignments).

"Engagement" means the engagement (including the Intermediaries or Intermediaries Staff's acceptance of the Client's offer), employment or use of the Intermediary's Services or the services of any Agency Worker by the Client or by any third party to whom the Intermediary and/or any Agency Worker have been introduced by the Client, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, or through any other employment business. **"Engage"**, **"Engages"** and **"Engaged"** shall be construed accordingly.

"EU Drivers' Hours Regulations" means Regulation (EC) No. 561/2006 of the European Parliament and of the Council of 15 March 2006 (as applicable to such Assignments).

"First Assignment" means:

- (i) the relevant Assignment; or
- (ii) if prior to the relevant Assignment; the first time that the Agency Worker was supplied to the Client.

"Goods Vehicles (Licensing of Operators) Act" means the Goods Vehicles (Licensing of Operators) Act 1995 (as applicable to such Assignments).

"Holding company" and **"subsidiary"** mean a **"holding company"** and **"subsidiary"** as defined in section 1159 of the Companies Act 2006 (as applicable to such Assignments).

"Intermediary" means the person, firm or corporate body introduced to the Client by the Agency to carry out an Assignment (and, save where otherwise indicated, includes the Agency Worker).

"Intermediary Services" means the services to be supplied to the Client by the Intermediary.

"Intermediary Staff" means any officer, employee, worker or representative of the Intermediary Services (and save where otherwise indicated, includes Intermediary Staff and any third party to whom the provision of the Intermediary Services is assigned or sub-contracted with the prior approval of the Client).

"Introduce" means the provision to the Client of information (by any medium) by the Agency which identifies the Intermediary or the Agency Worker and leads to the Client engaging or employing the Intermediary or the Agency Worker either directly or indirectly or through the Agency; and **"Introduced"** shall be construed accordingly.

"Introduction Fee" means the fee payable by the Client in accordance with clause 10.

"ITEPA" means the Income Tax (Earnings and Pensions) Act 2003.

"Losses" 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.

"Mobile Worker" means any **"mobile worker"** as defined under the Road Transport (Working Time) Regulations, namely any worker forming part of the travelling staff, including trainees and apprentices, who is in the service of an undertaking which operates transport services for passengers or goods by road for hire or reward or on its own account (as applicable to such Assignments).

"NICS Legislation" means the social security (categorisation of Earners) Regulations 1978.

"Period of Availability" means a **"period of availability"** as defined under the Road Transport (Working Time) Regulations, namely, a period during which the Mobile Worker is not required to remain at his/her workstation (having the same meaning as defined under the Road Transport (Working Time) Regulations), but is required to be available to answer any calls to start or resume driving or to carry out other work, including periods during which the Mobile Worker is accompanying a Vehicle being transported by a ferry or by a train as well as periods of waiting at frontiers and those due to traffic prohibitions provided that the Mobile Worker knows before the start of the period about that period of availability and the reasonably foreseeable duration of the period of availability

"Permitted Recipients" means the Agency and the Client, the employees of each party, any third parties engaged to perform obligations in connection with these Terms.

"Qualifying Period" means 12 continuous Calendar Weeks during the whole or part of which the Agency Worker is supplied by one or more Temporary Work Agencies to the Client to work temporarily for and under the supervision and direction of the Client in the same role. When calculating whether any weeks completed with the Client count as continuous towards the Qualifying Period, where:

- (a) the Agency Worker has started working during an assignment and there is a break, either between assignments or during an assignment, when the Agency Worker is not working;
- (b) the break is:
 - (i) for any reason and not more than six Calendar Weeks;
 - (ii) wholly due to the fact that the Agency Worker is incapable of working in consequence of sickness or injury and the break is 28 Calendar Weeks or less; paragraph (iii) does not apply; and, if required to do so by the Agency, the Agency Worker has provided such written medical evidence as may reasonably be required;
 - (iii) related to pregnancy, childbirth or maternity and is at a time in a protected period, being a period beginning at the start of the pregnancy and ending at the end of the 26 weeks beginning with childbirth (being the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy) or, if earlier, when the Agency Worker returns to work;
 - (iv) wholly for the purpose of taking time off or leave, whether statutory or contractual, to which the Agency Worker is otherwise entitled which is:
 - (A) ordinary, compulsory or additional maternity leave;
 - (B) ordinary or additional adoption leave;
 - (C) ordinary or additional paternity leave;
 - (D) time off or other leave not listed in paragraphs (iv)(A), (B) or (C) above; or
 - (E) for more than one of the reasons listed in paragraphs (iv)(A), (B), (C) and (D) above;
 - (v) wholly due to the fact that the Agency Worker is required to attend at any place in pursuance to being summoned for service as a juror and the break is 28 Calendar Weeks or less;
 - (vi) wholly due to a temporary cessation in the Client's requirement for any worker to be present at the establishment and work in a particular role for a pre-determined period of time according to the established custom and practices of the Client;
 - (vii) wholly due to a strike, lock-out or other industrial action at the Client's establishment; or

- (viii) wholly due to more than one of the reasons listed in paragraphs (ii), (iii), (iv), (v), (vi) or (vii); and
- (c) the Agency Worker returns to work in the same role with the Client,

any weeks during which the Agency Worker worked for the Client before the break shall be carried forward and treated as counting towards the Qualifying Period with any weeks during which the Agency Worker has worked, where the Agency Worker has started working in a role during an Assignment and is unable to continue working for a reason described in paragraph (b)(iii) or (b)(iv)(A), (B) or (C), for the period that is covered by one or more such reasons, the Agency Worker shall be deemed to be working in that role with the Client for the original intended duration or likely duration of the relevant Assignment, whichever is the longer. For the avoidance of doubt, time spent by the Agency Worker working during an assignment before 1 October 2011 does not count for the purposes of the definition of **"Qualifying Period"**.

"Relevant Terms & Conditions" means for the purposes of the Agency Worker Regulations terms and conditions relating to pay, the durations of working time, night work, rest periods, rest breaks that are ordinarily included in the contracts of employees or workers (as appropriate) of the Client whether by collective agreement or otherwise and including such terms and conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation.

"Remuneration" includes gross base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Intermediary for services provided to or on behalf of the Client.

"Road Transport (Working Time) Regulations" means the Road Transport (Working Time) Regulations 2005 (as applicable to such Assignments).

- (a) **"Temporary Work Agency"** means as defined in Regulation 4 of the AWR being a person engaged in the economic activity, public or private, whether or not operating for profit, and whether or not carrying on such activity in conjunction with others, of: supplying individuals to work temporarily for and under the supervision and direction of Clients; or
- (b) paying for, or receiving or forwarding payment for, the services of individuals who are supplied to work temporarily for and under the supervision and direction of Clients.

Notwithstanding paragraph (b) of this definition a person is not a Temporary Work Agency if the person is engaged in the economic activity of paying for, or receiving or forwarding payments for, the services of individuals regardless of whether the individuals are supplied to work for Clients. For the purpose of this definition, a "Client" means a person engaged in economic activity, public or private, whether or not operating for profit, to whom individuals are supplied, to work temporarily for and under the supervision and direction of that person.

"Shared Personal Data" means the personal data to be shared between the parties under these Terms. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject: name and contact information; qualifications and employment experience; remuneration and financial details; entitlement to work in the UK; criminal records; disabilities and health information.

"Terms" means these terms and conditions.

"Vehicle" means a **"goods vehicle"** as defined under the Road Transport (Working Time) Regulations 2005 (as applicable to such Assignments).

"Working Time" means **"working time"** as defined under the Road Transport (Working Time) Regulations, namely, the time from the beginning to the end of work during which the Agency Worker is at his/her workstation, at the disposal of the Client and/or the Agency and/or a Temporary Work Agency and exercising his/her functions or activities, being (as applicable to such Assignments):

- (a) time devoted to all road transport activities including, in particular, driving, loading and unloading, assisting passengers boarding and disembarking from a Vehicle, cleaning and technical maintenance, and all other work intended to enhance the safety of the Vehicle, its cargo and passengers or to fulfil the legal or regulatory obligations directly linked to the specific transport operation under way, including monitoring of loading and unloading and dealing with administrative formalities with police, customs, immigrations officers and others; or
- (b) time during which the Agency Worker cannot dispose freely of his/her time and is required to be at his/her workstation, ready to take up normal work, with certain tasks associated with being on duty, in particular during periods awaiting loading or unloading where their foreseeable duration is not known in advance, that is to say

either before departure or just before the actual start of the period in question, or under collective agreements or workforce agreements, (with the terms "**workstation**", "**collective agreements**" and "**workforce agreements**" having the same meaning as defined under the Road Transport (Working Time) Regulations) (as applicable to such Assignments).

"Working Time Regulations" means the Working Time Regulations 1998.

- (a) A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

3. SERVICES TO BE PROVIDED

In consideration of the Charges, the Agency agrees to search for Intermediaries for the Client who meet the Client's requirements as notified to the Agency from time to time.

4. THESE TERMS

- (a) These Terms constitute the contract between the Agency and the Client for the supply of the Intermediary Services by the Agency to the Client and are deemed to be accepted by the Client by virtue of its request for, interview with or Engagement of the Intermediary, or the passing of any information by the Client about the Agency Worker or Intermediary to any third party following an Introduction.
- (b) The Client acknowledges that the Intermediary may supply any of the Intermediary Staff to perform the Intermediary Services and where the Intermediary is unable to provide any part of the Intermediary Services for whatever reason the Intermediary shall be entitled to assign or sub-contract the performance of the Intermediary Services provided that the Agency and the Client are reasonably satisfied that the assignee or sub-contractor has the required skills, qualifications, resources and personnel to provide the Intermediary Services to the required standard and that the terms of any such assignment or sub-contract contain the same acknowledgements under and obligations imposed by the agreement between the Intermediary and the Agency. The Client shall not unreasonably withhold or delay any approval sought for the assignment or sub-contracting of the Intermediary Services.
- (c) No variation or alteration of these Terms shall be valid unless the details of such variation are agreed between a director of the Agency 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 such varied terms shall apply.
- (d) The Agency is entitled to assume that any employee or agent of the Client has the Client's authority to bind the Client unless the Client notifies the Agency otherwise in writing and the Agency is not required to seek confirmation of that authority.
- (e) The Client acknowledges that the Intermediary and the Agency Worker carrying out the Assignment have opted out of the Conduct Regulations and that none of the Conduct Regulations apply to any Assignments governed by these Terms.

5. CLIENT OBLIGATIONS

- (a) The Client shall assist the Agency in complying with the Agency's duties under such provisions of the Driving Legislation as may be applicable and any other similar legislation as may be applicable to the Assignment in any country or countries by supplying any relevant information about and copies of any relevant documentation (including, without limitation, tachograph charts) relating to the Assignment requested by the Agency and the Client shall not do anything to cause the Agency to be in breach of its obligations under such Driving Legislation.
- (b) If the Agency is supplying Mobile Workers/drivers, in relation to any Vehicles and operations subject to the Goods Vehicles (Licensing of Operators) Act, it is a condition of these Terms that the Client (as applicable to such Assignments):
 - (i) holds a complete, accurate and up-to-date operator's licence under the Goods Vehicle (Licensing of Operators) Act throughout the period of any Assignment and the Client hereby warrants that it holds such a licence;
 - (ii) will comply with all of its obligations for obtaining and maintaining such operator's licence under the Goods Vehicles (Licensing of Operators) Act; and

- (iii) will upon request permit the Agency to inspect and take copies of the Client's operator's licence.
- (c) The Client shall take all reasonable steps to ensure that all transport time schedules which it implements and any other arrangements regarding working time in relation to the Assignment will conform in full to the requirements of the Driving Legislation as may be applicable to the Assignment and any other similar regulations in any country or countries applicable to the Assignment.
- (d) The Client will comply with its obligations under Regulations 12 (Rights of agency workers in relation to access to collective facilities and amenities) and 13 (Rights of agency workers in relation to access to employment) of the AWR.
- (e) To enable the Agency to comply with its obligations under the AWR, the Client undertakes as soon as possible prior to the commencement of each Assignment and during each Assignment (as appropriate) and at any time at the Agency's request:
 - (i) to inform the Agency of any Calendar Weeks since 1 October 2011 in which the relevant Agency Worker has worked in the same or a similar role with the Client via any third party prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment which count or may count towards the Qualifying Period;
 - (ii) if, since 1 October 2011, the Agency Worker has worked in the same or a similar role with the Client via any third party prior to the date of commencement of the relevant Assignment and/or works in the same or a similar role with the Client via any third party during the relevant Assignment, to provide the Agency with all the details of such work, including (without limitation) details of where, when and the period(s) during which such work was undertaken and any other details requested by the Agency;
 - (iii) to inform the Agency if, since 1 October 2011, the Agency Worker has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment:
 - (A) completed 2 or more assignments with the Client;
 - (B) completed at least 1 assignment with the Client and 1 or more earlier assignments with any member of the Client's Group; and/or
 - (C) worked in more than 2 roles during an assignment with the Client and on at least two occasions worked in a role that was not the same role as the previous role.
- (f) Save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to:
 - (i) provide the Agency with written details of the basic working and employment conditions the Agency Worker would be entitled to for doing the same job if the Agency Worker had been recruited directly by the Client as an employee or worker at the time the Qualifying Period commenced or with those of a Comparable Employee, such basic working and employment conditions being the Relevant Terms and Conditions;
 - (ii) inform the Agency in writing whether the Relevant Terms and Conditions provided are those of a hypothetical directly recruited employee or worker or those of a Comparable Employee;
 - (iii) if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide the Agency with a written explanation of the basis on which the Client considers that the relevant individual is a Comparable Employee; and
 - (iv) inform the Agency in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced.
- (g) Save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to provide the Agency with written details of its pay and benefits structures and appraisal processes and any variations of the same.
- (h) In addition, for the purpose of awarding any bonus to which the Agency Worker may be entitled under the AWR, the Client will:
 - (i) integrate the Agency Worker into its relevant performance appraisal system;

- (ii) assess the Agency Worker's performance;
 - (iii) provide the Agency with copies of all documentation relating to any appraisal of the Agency Worker, including without limitation written details of the outcome of any appraisal and the amount of any bonus awarded; and
 - (iv) provide the Agency with all other assistance the Agency may request in connection with the assessment of the Agency Worker's performance for the purpose of awarding any bonus.
- (i) The Client will comply with all the Agency requests for information and any other requirements made by the Agency to enable the Agency to comply with the AWR.
- (j) If the Agency is supplying Mobile Workers/drivers, the Client undertakes to comply with all statutory duties applicable in respect of any Assignment, including (without limitation) making proper arrangements to ensure that the following matters are compliant with the relevant statutory obligations: driving licences and permits, drivers' hours and records, the issue, collection and other use of tachographs, drivers cards and company cards, maintenance and safety of all Vehicles driven, operated or used by any Agency Worker, all duties under health and safety regulations, road traffic and liability insurances including fully comprehensive insurance for the Vehicle and its contents. The Client agrees to allow the Agency to inspect and take copies of any relevant policies of insurance and any other relevant documentation.
- (k) If the Agency is supplying Mobile Workers/drivers, the Client will take all reasonable steps and give any reasonable instructions to the Agency Worker for the purpose of ensuring that the performance of the Assignment complies with the Department of Transport's Highway Code and any other rules regarding road safety applicable to the country or countries in which any journeys (or portion of journeys) take place.
- (l) The Client warrants and undertakes that:
 - (i) all information and documentation supplied to the Agency in accordance with clause 5 is complete, accurate and up-to-date; and
 - (ii) it will, during the term of the relevant Assignment, immediately inform the Agency in writing of any subsequent change in any information or documentation provided in accordance with clause 5.
- (m) The Client will pay for any paid absences from an Assignment taken by the Agency Worker to attend antenatal medical appointments which are required to be given to agency workers pursuant to the Agency Worker Regulations and any payment that is required to be paid to the Agency Worker pursuant to the Agency Worker Regulations during periods when the Agency Worker is unable to work on an Assignment due to health and safety reasons.
- (n) The Client shall inform the Agency in writing of any:
 - (i) oral or written complaint an Agency Worker makes to the Client which is or may be a complaint connected with rights under the AWR; and
 - (ii) written request for information relating to the Relevant Terms and Conditions that the Client receives from an Agency Worker;

as soon as possible but no later than 7 calendar days from the day on which any such complaint or request is made, in order to resolve any such complaint or to provide any such information in a written statement to the Agency Worker within 28 days of the Client's receipt of such a request in accordance with Regulation 16 of the AWR and the Client will provide the Agency with a copy of any such written statement.

- (o) The Client agrees that it will not structure Assignments in a manner to avoid or circumvent the operation of the Agency Worker Regulations.
- (p) The Client undertakes that it knows of no reason why it would be detrimental to the interests of the Agency Worker for the Agency Worker to fill the Assignment.

6. AGENCY OBLIGATIONS

- (a) When Introducing an Intermediary to the Client the Agency shall inform the Client:

- (i) of the identity of the Intermediary and that of the Agency Worker supplied by the Intermediary to carry out the Assignment;
 - (ii) that the Agency Worker has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment;
 - (iii) that the Agency Worker is willing to work in the Assignment;
 - (iv) details of the Intermediary Services to be provided; and
 - (v) the Charges.
- (b) Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third day following, save where the Intermediary is Introduced for an Assignment in the same position as one in which the Intermediary had previously been supplied within the previous 5 days and such information has already been given to the Client, unless the Client requests that the information be resubmitted.
- (c) If the Agency is supplying Mobile Workers/drivers, in relation to any Vehicles and operations subject to the Goods Vehicles (Licensing of Operators) Act, to assist the Client to comply with the relevant provisions of the Goods Vehicle (Licensing of Operators) Act, the Agency agrees to provide the Client upon reasonable written request with such information as is available to the Agency about any driving assignments carried out by the Agency Worker in the seven calendar days immediately preceding the commencement of an Assignment with the Client, provided that the Agency Worker shall have worked for a client or customer of the Agency during those seven calendar days (as applicable to such Assignments).

7. TIMESHEETS AND ELECTRONIC TIME AND ATTENDANCE MANAGEMENT SYSTEMS

- (a) Save where the parties agree to use electronic time and attendance management systems where the number of hours worked by the Agency Worker will be calculated automatically, at the end of each week of an Assignment (or at the end of the Assignment where it is for a period of 1 week or less) the Client shall sign the Agency's timesheet verifying the number of hours worked by the Intermediary during that week.
- (b) Signature of the timesheet by the Client is confirmation of the number of hours worked. If the Client is unable to sign a timesheet produced for authentication by the Intermediary because the Client disputes the hours claimed, the Client shall inform the Agency as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Agency to enable the Agency to establish what hours, if any, were worked by the Agency Worker. Failure to sign the timesheet does not absolve the Client of its obligation to pay the Charges in respect of the hours worked.
- (c) The Client shall not be entitled to decline to sign a timesheet or to raise an exception on the electronic time and attendance management system on the basis that it is dissatisfied with the work performed by the Agency Worker. In the event that the Client is dissatisfied with the Agency Worker the provisions of clause 12 below shall apply.

8. CHARGES

The Client agrees to pay the Charges as agreed and notified to the Client, in circumstances where Charges have not been agreed in advance, Charges will be invoiced in accordance with the Agency's Sale of Charges in force at the relevant time copies are available upon request.

- (a) Unless specifically agreed otherwise in writing by the Agency prior to commencement of the Assignment, overtime charges and shift premiums as agreed with the Client from time to time shall be added to the Charges, for hours worked in excess of 8 hours per day Monday to Friday, evening work and night work and all hours worked on a Saturday and Sunday. For further details regarding this, the Client should contact the Agency's temporaries' controller.
- (b) For Agency Workers involved in operations which are subject to the EU Drivers' Hours Regulation or the Road Transport (Working Time) Regulations, the number of hours worked by the Agency Worker comprises both the total number of hours of Working Time and the total number of hours spent being available during any Period of Availability. Unless otherwise agreed between the parties, the Client will not be obliged to make any payment in relation to rest breaks taken during a shift by an Agency Worker which are required to be taken by that Agency Worker by virtue of the EU Drivers' Hours Regulation or the Road Transport (Working Time) Regulations.

- (c) The Agency reserves the right to vary the Charges agreed with the Client, by giving written notice to the Client:
 - (i) in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the AWR the National Minimum Wage Regulations 1999, No. 68 The National Minimum Wage (amendment) Regulations 2016, The Pensions Act 2008, The Working Time Regulations, the apprenticeship levy and the Automatic Enrolment of workplace pension schemes are absorbed within the Agency's own margin; and/or
 - (ii) if there is any variation in the Relevant Terms and Conditions.
- (d) The Agency may, increase the Charges on an annual basis with effect from the first day of each and every financial year of the Agency in line with the percentage increase in the Consumer Prices Index in the preceding 12-month period. Any such increase shall be based on the latest available figure for the percentage increase in the Consumer Prices Index at the beginning of the last month of the previous financial year.
- (e) The Charges are invoiced to the Client on a weekly basis and are payable within 14 days. VAT is payable at the applicable rate on the entirety of the Charges.
- (f) In addition to the Charges, the Client shall pay the Agency an amount equal to any bonus that the Client awards to the Agency Worker in accordance with clause 5(h) immediately following any such award and the Agency will pay any such bonus to the Intermediary for onward payment to the Agency Worker. For the avoidance of doubt, the Client will also pay any employer's National Insurance Contributions and the Agency's commission in addition to any bonus payable to the Agency Worker.
- (g) The Agency reserves the right to charge interest on invoiced amounts unpaid by the due date at the rate of 3% per annum above the base rate from time to time of Lloyds TSB Bank PLC (both before and after judgment) accruing on a daily basis on all amounts outstanding from the due date until the date of payment.
- (h) No refunds are payable in respect of the Charges of the Agency.
- (i) For the avoidance of doubt the Charges do not include any travel and hotel expenses, driving charges (for example motorway and bridge tolls, any congestions charge or similar charge) or other expenses or any tickets, fines, penalties or similar for parking, speeding or any other motoring or driving offences.
- (j) The Client's obligations under this clause 8 and clause 10 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.

9. PAYING THE INTERMEDIARY

The Agency is responsible for paying the Intermediary.

10. TRANSFER FEES

- (a) The Client shall be liable to pay a Transfer Fee if the Client Engages an Agency Worker Introduced by the Agency other than via the Agency or introduces the Agency Worker to a third party and such introduction results in an Engagement of the Agency Worker by the third party other than via the Agency and:
 - (i) where the Agency Worker has been supplied by the Agency, such Engagement takes place during the Assignment or within the Relevant Period; or
 - (ii) where the Agency Worker has not been supplied, such Engagement takes place within 6 months from the date of the Introduction to the Client.
- (b) If the Client wishes to Engage the Agency Worker other than via the Agency without liability to pay a Transfer Fee, the Client may, on giving one week's written notice to the Agency, engage the Agency Worker for the Period of Extended Hire.
- (c) During such Period of Extended Hire the Agency shall supply the Agency Worker on the same terms on which s/he has or would have been supplied during the Assignment and in any case on terms no less favourable than those terms which applied immediately before the Agency received the notice in clause 10(b); and the Client shall continue to pay the Charges set out in clause 8. If the Agency is unable to supply the Agency Worker for any reason outside its control for the whole or any part of the Period of Extended Hire; or the Client does not wish to hire the Agency Worker on the same terms as the Assignment; but the Agency Worker is Engaged by the Client, the Client shall pay the Transfer Fee, reduced pro-rata to reflect any Charges paid by the Client during any part of

the Period of Extended Hire worked by the Agency Worker before being Engaged by the Client. If the Client fails to give notice of its intention to Engage the Agency Worker other than via the Agency before such Engagement commences, the parties agree that the Transfer Fee shall be due in full.

- (d) Where prior to the commencement of the Client's Engagement other than via the Agency the Agency and the Client agree that such Engagement will be on the basis of a fixed term of less than 12 months, the Agency may, in its absolute discretion, reduce the Transfer Fee pro-rata. Such reduction is subject to the Client Engaging the Agency Worker for the agreed fixed term. Should the Client extend the Agency Worker's Engagement or re-Engage the Agency Worker within 12 months from the commencement of the initial Engagement the Agency reserves the right to recover the balance of the Transfer Fee.
- (e) The Client agrees, immediately upon demand, to provide the Agency with complete and accurate written details of the Agency Worker's Remuneration and the Client warrants that such details will be complete and accurate.
- (f) No refund of the Transfer Fee will be paid in the event that the Engagement of the Agency Worker other than via the Agency by the Client or by a third party to which the Client introduces the Agency Worker terminates or terminates before the end of the fixed term referred to in clause 10(d).
- (g) VAT is payable in addition to any Transfer Fee due.

11. QUALIFICATIONS AND AUTHORISATIONS

Where the Agency Worker is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment, the Agency will take all reasonably practicable steps to obtain and offer to provide to the Client copies of any relevant qualifications or authorisations of the Agency Worker.

12. UNSUITABILITY OF THE AGENCY WORKER

- (a) The Client undertakes to supervise the Agency Worker sufficiently to ensure the Client's satisfaction with the Agency Worker's standards of work. If the Client reasonably considers that the services of the Agency Worker are unsatisfactory by directing the Agency to remove the Agency Worker. The Agency may, in its absolute discretion, in such circumstances, reduce or cancel the Charges for the time worked by that Agency Worker, provided that the Client has notified the Agency immediately that they have asked the Agency Worker to leave the Assignment or the Assignment terminates:
 - (i) within 4 hours of the Agency Worker commencing the Assignment where the Assignment is for more than 7 hours; or
 - (ii) within 2 hours for Assignments of 7 hours or less;and provided that notification of the unsuitability of the Agency Worker is confirmed in writing to the Agency within 48 hours of the termination of the Assignment.
- (b) The Agency shall notify the Client immediately if it receives or otherwise obtains information which gives the Agency reasonable grounds to believe that any Agency Worker supplied to the Client is unsuitable for the Assignment and shall be entitled to terminate the Assignment forthwith without prior notice and without liability. Notwithstanding, the Client shall remain liable for all such Charges incurred prior to the termination of the Assignment.
- (c) The Client shall notify the Agency immediately and without delay and in any event within 4 hours if the Agency Worker fails to attend work or has notified the Client that they are unable to attend work for any reason.

13. TERMINATION OF THE ASSIGNMENT

- (a) Either party may terminate the Assignment by giving to the other party in writing the period of time specified for the Assignment.
- (b) Notwithstanding the provisions of clause 12(a), the Client may terminate the Assignment forthwith by notice in writing to the Agency where:
 - (i) the Intermediary has acted in breach of any statutory or other reasonable rules and regulations applicable to it while providing the Intermediary Services; or
 - (ii) the Intermediary is in wilful or persistent breach of its obligations; or

- (iii) the Client reasonably believes that the Intermediary has not observed any condition of confidentiality applicable to the Intermediary from time to time; or
 - (iv) the Client reasonably considers that the Intermediary's provision of the Intermediary Services is unsatisfactory.
- (c) Notwithstanding the provisions of clause 12(a), the Agency may terminate an Assignment forthwith by notice in writing if:
- (i) the Client is in wilful or persistent breach of its obligations under these Terms and where the breach is capable of being remedied, fails to remedy the breach within 7 days of receiving written notice from the Agency to do so; or
 - (ii) the Client fails to pay any amount which is due to the Agency in full and on the date that the payment falls due; or
 - (iii) 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
 - (iv) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Client; or
 - (v) 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 these Terms); or
 - (vi) (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.

14. TERMINATION OF THESE TERMS

- (a) The Agency may terminate these Terms immediately on giving notice in writing to the Client if:
- (i) the Client commits any material breach of these Terms and (in the case of a breach capable of being remedied) shall have failed to remedy the breach within ten days after receiving a written notice of the breach requiring the breach to be remedied within such period; or
 - (ii) the Client becomes insolvent, is unable to pay its debts, ceases to trade, has a receiver appointed over the whole or any part of its assets, has an administrator appointed, enters into any composition with creditors generally, is wound up or any step is taken towards any of these events.
- (b) The Client may terminate these Terms by providing the Agency with 6 months prior written notice subject always to the requirement that the effective date of termination of such notice must fall within the period of 1 January to 31 July, in any calendar year during the term of these Terms for such notice to be valid.

15. EFFECT OF TERMINATION

Any termination of these Terms however caused shall not affect:

- (a) any rights or liabilities which have accrued before the time of termination; or
- (b) the continuance in force of any provision of these Terms which expressly or by implication is intended to come into or continue in force after termination.

16. LIABILITY

- (a) Whilst reasonable efforts are made by the Agency to give satisfaction to the Client by ensuring reasonable standards of skill, integrity and reliability from the Intermediary and to provide the same in accordance with the request as provided by the Client no liability is accepted by the Agency for any Losses arising from the Introduction of the Intermediary, any failure to provide any Intermediary for all or part of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Intermediary or if the Intermediary terminates the Assignment for any reason. Save as set out otherwise in these Terms, the liability of the Agency under these Terms (including for negligence) shall not exceed the Agency's Charges relating to the Introduction of the Agency Worker, save in respect of any liability which the Agency has insurance cover for, in which case, the liability of the

Agency shall not exceed the limit specified in such insurance cover. For the avoidance of doubt, the Agency 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.

- (b) The Client warrants that it does not (and does not have the right to) supervise, direct or control the Intermediary or the Intermediary Staff as to the manner in which they provide the Intermediary Services. The Client will notify the Agency in writing if it exercises supervision, direction or control, or seeks the right to supervise, direct or control the Intermediary or the Intermediary Staff in which case the Agency may terminate the Terms and/ or any Assignments under the Terms in accordance with clause 13. In addition the Client agrees that the Agency does not (and does not have the right) to supervise, direct or control the Intermediary or the Intermediary Staff. Furthermore no member of the Intermediary Staff is an agency worker as defined under the AWR.
- (c) The Client shall advise the Agency of any special health and safety matters about which the Agency is required to inform the Intermediary and about any requirements imposed by law or by any professional body, which must be satisfied if the Intermediary is to fill the Assignment.
- (d) The Client will comply in all respects with, the Driving Legislation (if applicable), all statutory requirements set out in clause 5(j) (if applicable), all relevant statutes, by-laws, codes of practice and legal requirements, including the provision of adequate public liability insurance cover in respect of the Intermediary. The Client shall comply in all respects with all relevant statutes, by-laws, codes of practice, legal requirements and all Applicable Laws including the provision of adequate public liability insurance in respect of the Intermediary.
- (e) The Client shall indemnify and keep indemnified the Agency against any Losses incurred by the Agency arising out of:
 - (i) any Assignment;
 - (ii) save as otherwise set out in these Terms, any claim or liability relating to an Agency Worker arising under, out of or in relation to the Agency Worker Regulations;
 - (iii) any non-compliance with, and/or as a result of any breach of, these Terms by the Client; and
 - (iv) any claim by third parties caused by, or resulting from, or arising in connection with the default or negligence of the Intermediaries and/or an Agency Worker; and
 - (v) any claim by an agency worker (as defined in the Agency Worker Regulations) that such agency worker has been subject to a detriment for refusing (or proposing to refuse) to forgo a right conferred by the Agency Worker Regulations as a result of any direct or indirect action of the Client.
- (f) The Client shall indemnify and keep indemnified the Agency against any Losses incurred by the Agency by reason of any proceedings, claims or demands by any third party (including specifically, but without limitation, HMRC and any successor, equivalent or related body pursuant to any of the provisions of ITEPA or the NICs legislation (and/or any supporting or consequential secondary legislation relating thereto)) arising out of any Assignment or arising out of any non-compliance with and/or as a result of any breach of these Terms by the Client.
- (g) The Client shall inform the Agency in writing of any AWR Claim which comes to the notice of the Client as soon possible but no later than 7 (seven) calendar days from the day on which any such AWR Claim comes to the notice of the Client.
- (h) If the Agency Worker brings, or threatens to bring, any AWR Claim, the Client will take such action and give such information and assistance as the Agency may request, and within any timeframe requested by the Agency to avoid, dispute, resist, mitigate, compromise or defend any such AWR Claim and to appeal against any judgment given in respect thereof.

17. NON-SOLICITATION

- (a) The Client shall not, without the prior written consent of the Agency, at any time whilst services are being provided by the Agency to the Client under these Terms and for a period of six months from the date when services were last provided or, if later, from the date of termination of the Terms, solicit or entice away from the Agency or employ or attempt to employ, any person who is, or has been, an employee of the Agency or a person directly engaged by the Agency.

- (b) Any consent given by the Agency in accordance with clause 16(a) shall be subject to the Client paying to the Agency a sum equivalent to 35% of the then current annual remuneration of the person engaged or employed by the Agency or, if higher, 35% of the annual remuneration to be paid by the Client to that person.

18. ANNOUNCEMENTS

Each party shall ensure that, except as may be required by law or any regulatory authority, neither it nor any of its employees, agents or contractors shall make, or cause to be made, (whether to the employees, customers, suppliers, public, press or otherwise) any communication, media statement, announcement or other disclosure whatsoever, whether written or oral, about the other party to these Terms, the existence of these Terms or any matter referred to in these Terms without the other party's prior written consent to its contents.

19. CONFIDENTIALITY

All Introductions and Agency Workers' details are confidential and are supplied to the Client on the understanding that the Client will keep the Confidential Information confidential and not disclose it to any third party without the Agency's prior written consent.

20. DATA PROTECTION

- (a) This clause 19 sets out the framework for the sharing of personal data between the Agency and the Client as data controllers. Each party acknowledges that one party (the Data Discloser) will regularly disclose to the other party (the Data Recipient) Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- (b) Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation.
- (c) Each party shall:
 - (i) ensure that it has all necessary legal bases in place and provided all required information to data subjects to enable lawful transfer of the Shared Personal Data to the Data Recipient for the Agreed Purposes;
 - (ii) give full information to any data subject whose personal data may be processed under these Terms of Business of the nature such processing. This includes giving notice that, on the termination of these Terms of Business, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
 - (iii) process the Shared Personal Data only for the Agreed Purposes;
 - (iv) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - (v) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by these Terms of Business;
 - (vi) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and
 - (vii) not transfer any personal data outside of the European Economic Area unless the transferor:
 - (aa) complies with the provisions of Article 26 of the GDPR (in the event the third party is a joint controller); and
 - (bb) ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 of the GDPR; or (iii) one of the derogations for specific situations in Article 49 of the GDPR applies to the transfer.

Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation.

- (d) In particular, each party shall:
 - (i) promptly inform the other party about the receipt of any data subject access request;

- (ii) provide the other party with reasonable assistance in complying with any data subject access request;
 - (iii) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;
 - (iv) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (v) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
 - (vi) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of these Terms of Business unless required by law to store the personal data or the Data Recipient has established another legal basis for keeping the Personal Data;
 - (vii) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
 - (viii) maintain complete and accurate records and information to demonstrate its compliance with this clause 19 and allow for audits by the other party or the other party's designated auditor; and
 - (viii) provide the other party with contact details of at least one employee as point of contact and
- (e) The Client indemnifies and shall keep indemnified the Agency from and against any and all fines, losses, costs, liabilities, expenses and damages (including, but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all fines, interest, penalties and legal fees and expenses (calculated on a full indemnity basis) and all other professional costs and expenses suffered or incurred by the Agency arising out of or in connection with the Company's breach of this clause 19 or the Data Protection Legislation.
- (f) The Agency's total aggregate liability to the Client, whether in contract, tort (including negligence) breach of statutory duty, or otherwise, arising from or in connection with a breach of this clause 19 or the Data Protection Legislation by the Agency shall be limited to £200,000. The Agency's liability for all indirect, consequential and special loss shall be excluded

21. ASSIGNMENT AND SUB-CONTRACTING

The Client shall not, without the prior written consent of the Agency, assign, transfer, mortgage, charge or deal in any manner with these Terms or any of its rights and obligations under or arising out of these Terms (or any document referred to in them), or purport to do any of the same.

22. ENTIRE AGREEMENT

- (a) These Terms constitute the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- (b) The Client agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in these Terms. Each party agrees that its only liability in respect of those representations and warranties that are set out in these Terms (whether made innocently or negligently) shall be for breach of contract.

23. SEVERABILITY

If any of the provisions of these Terms shall be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the remaining terms, which shall continue to be valid to the fullest extent permitted by applicable laws.

24. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- (a) A person who is not a party to these Terms shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

- (b) The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under these Terms is not subject to the consent of any person that is not a party to these Terms.

25. GOVERNING LAW AND JURISDICTION

- (a) These Terms and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- (b) The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Terms or their subject matter or formation (including non- contractual responsible manager for all issues arising out of the Data Protection Legislation, including the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

Company Name:			
Print Name:			
Position:			
Signature:		Date:	