

## Agreement

# Terms of Engagement with a Limited Company Contractor who has Opted Out of the Conduct Regulations (Inside IR35 and under SDC)

### THE PARTIES

- (1) [[CANDIDATE.LTD.COMPANY]] Limited (registered company no. [[CANDIDATE.LTD.COMPANY.NO]]) of [[CANDIDATE.LTD.COMPANY.ADDRESS.FLAT]] (“**the Intermediary**”).
- (2) Blueberry Creative Consultants Limited (registered company no. 04379194) of 10 Redan House, Redan Place, London, W2 4SA (“**the Employment Business**”).

### RECITALS

- (A) The Intermediary carries on the business of the provision of contractor services and has agreed to provide the services (“**the Intermediary Services**”) as specified in the relevant Assignment Details Form.
- (B) The Employment Business has requested the Intermediary and the Intermediary has agreed with the Employment Business, to provide the Intermediary Services to the Hirer on the terms and subject to the terms of this Agreement.

### 1. DEFINITIONS AND INTERPRETATIONS

1.1. In this Agreement the following definitions apply:

- “Agency Worker”** means such of the Intermediary’s employees, workers, officers or representatives supplied to provide the Intermediary Services;
- “Assignment”** means the Intermediary Services to be performed by the Agency Worker for a period of time during which the Intermediary is supplied by the Employment Business to the Hirer;
- “Assignment Details Form”** means written confirmation of the Assignment details set out in clause 6.1.2;
- “AWR”** means the Agency Workers Regulations 2010;
- “AWR Regulation 10 Contract of Employment”** means a permanent contract of employment between the Intermediary and the Agency Worker that satisfies the requirements of Regulation 10 of the AWR;
- “Calendar Week”** means any period of seven days starting with the same day as the first day of the First Assignment;
- “Companies Acts”** means the Companies Acts 1985, 1989 and 2006;
- “Conditions of Liability”** means one of the conditions of liability set out in Sections 51 to 53 ITEPA;
- “Conduct Regulations”** means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
- “Confidential Information”** shall mean any and all confidential commercial, financial, marketing, technical or other information or data of whatever nature relating to the Hirer or Employment Business or their business or affairs (including but not limited to this Agreement, 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 Intermediary or any third party in relation to the Assignment by the Hirer or the Employment Business or by a third party on behalf of the Hirer whether before or after the date of this Agreement together with any reproductions of such information in any form or medium or any part(s) of such information;
- “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 Laws”** means the Data Protection Act 1998 or any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data;
- “Engagement”** means the engagement (including the Intermediary’s and/or the Agency Worker’s acceptance of the Hirer’s offer), employment or use of the Intermediary and/or any Agency Worker by the Hirer or by any third party to whom the Intermediary and/or any Agency Worker have been introduced by the Hirer, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, an agency, license, franchise or partnership arrangement, or any other engagement, and “Engage”, “Engages” and “Engaged” shall be construed accordingly;
- “First Assignment”** means:
- (a) the relevant Assignment; or
- (b) if, prior to the relevant Assignment:
- i. the Agency Worker has worked in any assignment in the same role with the relevant Hirer as the role in which the Agency Worker works in the relevant Assignment; and
- ii. the relevant Qualifying Period commenced in any such assignment,
- that assignment (an assignment being (for the purpose of this defined term) a period of time during which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Hirer to work temporarily for and under the supervision and direction of the relevant Hirer);
- “Hirer”** means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Intermediary is supplied or introduced requiring the Intermediary Services;
- “Hirer’s Group”** means (a) any individual, company, partnership, statutory body or other entity which from time to time Controls the Hirer, 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 Hirer, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006;
- “Intermediary Fees”** means the fees payable to the Intermediary for the provision of the Intermediary Services as set out in the relevant Assignment Details Form;
- “IR35 Legislation”** means Chapter 8 of Part 2 of ITEPA;
- “ITEPA”** means the Income Tax (Earnings and Pensions) Act 2003;
- “Losses”** means all losses, liabilities, damages, costs, expenses, fines, penalties or interest 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;
- “MSC Legislation”** means Chapter 9 of Part 2 of ITEPA of ITEPA;
- “NICs Legislation”** means the Social Security (Categorisation of Earners) Regulations 1978;
- “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 relevant Hirer to work temporarily for and under the supervision and direction of the relevant Hirer in the same role, and as further defined in the Schedule to this Agreement;
- “Relevant Terms and Conditions”** means terms and conditions relating to:
- (a) pay;
- (b) the duration of working time;
- (c) night work;
- (d) rest periods;
- (e) rest breaks; and
- (f) annual leave
- that are ordinarily included in the contracts of employees or workers (as appropriate) of the Hirer whether by collective agreement or otherwise and including (for the avoidance of doubt and without limitation) such terms and any basic working and employment conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation;
- “Reporting Requirements”** means the requirements of the Income Tax (Pay as you Earn) (Amendment No. 2) Regulations 2015;
- “Representation Agreement”** means the initial agreement signed between both parties agreeing the terms under which the Employment Business will represent the Intermediary;
- “Specified Intermediary”** means the party required to submit the report to HMRC in compliance with the Reporting Requirements;
- “Temporary Work Agency”** means as defined in the Schedule to this Agreement;
- “Transparency Regulations”** means the Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015;
- “TUPE”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006; and
- “WTR”** means the Working Time Regulations 1998.

- 1.2. Unless the context requires otherwise references to the singular include the plural and references to the masculine include the feminine and vice versa.
- 1.3. The headings contained in this Agreement are for convenience only and do not affect their interpretation.
- 1.4. Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of this Agreement) and all subordinate legislation made (before or after this Agreement) under it from time to time.

## 2. THE AGREEMENT

- 2.1. This Agreement together with the attached Schedule, the Representation Agreement and any applicable Assignment Details Form constitutes the entire agreement ("**the Agreement**") between the Employment Business and the Intermediary for the supply of the Intermediary Services to the Hirer and shall govern all Assignments undertaken by the Intermediary. This Agreement shall prevail over any other terms put forward by the Intermediary.
- 2.2. During an Assignment the Intermediary will be engaged on a contract for services by the Employment Business on the terms set out in this Agreement. For the avoidance of doubt this Agreement shall not be construed as a contract of employment between any Agency Worker or any representative of the Intermediary supplied to provide the Intermediary Services and either the Employment Business or the Hirer, and any of the liabilities of an employer arising out of the Assignment shall be the liabilities of the Intermediary.
- 2.3. No variation or alteration to this Agreement shall be valid unless details of such variations are agreed between the Employment Business and the Intermediary and are set out in writing.

## 3. RELATIONSHIP BETWEEN THE EMPLOYMENT BUSINESS AND THE INTERMEDIARY AND BETWEEN THE HIRER AND THE INTERMEDIARY

- 3.1. The Employment Business will endeavour to obtain suitable Assignments for the Intermediary. Intermediary shall not be obliged to accept any Assignment offered by the Employment Business.
- 3.2. The Intermediary acknowledges that the nature of temporary work means that there may be periods when no suitable work is available and agrees that:
  - 3.2.1. the suitability of the work to be offered shall be determined solely by the Employment Business;
  - 3.2.2. the Employment Business shall incur no liability to the Intermediary (or an Agency Worker) should it fail to offer opportunities to work to the Intermediary.
- 3.3. The Intermediary acknowledges to the Employment Business that its services are supplied to the Employment Business as an independent contractor and that accordingly the responsibility of complying with all statutory and legal requirements relating to the Agency Worker (including but not limited to matters of taxation and compliance with the immigration laws applicable to the jurisdiction in which the Intermediary Services are provided) shall fall upon and be discharged wholly and exclusively by the Intermediary.
- 3.4. Nothing in this Agreement shall render any Agency Worker an employee or worker of either the Employment Business or the Hirer. The Intermediary shall ensure that the Agency Worker does not hold him/herself out as an employee or worker of either the Employment Business or the Hirer. In the event that any person should seek to establish any liability or obligation upon the Employment Business on the grounds that the Agency Worker is an employee or worker of the Employment Business or the Hirer, the Intermediary shall upon demand indemnify the Employment Business and keep it indemnified in respect of any such liability or obligation and any related Losses which the Employment Business or Hirer shall incur.
- 3.5. If the Agency Worker has completed the Qualifying Period on the start date of the relevant Assignment or following completion of the Qualifying Period during the relevant Assignment, and if the Agency Worker is entitled to any terms and conditions relating to the duration of working time, night work, rest periods, rest breaks and/or annual leave under the AWR which are different and preferential to rights and entitlements relating to the same under the WTR, any such terms and conditions will be as set out in the relevant Assignment Details Form or any variation to the relevant Assignment Details Form (as appropriate) and the Intermediary will give the Agency Worker any such entitlements.
- 3.6. As a Temporary Work Agency, the Intermediary will notify the Employment Business as soon as possible prior to the commencement of the first Assignment under this Agreement if the Agency Worker has an AWR Regulation 10 Contract of Employment and shall provide a copy of that contract on request from the Employment Business. The Intermediary will also notify the Employment Business immediately if and when any such contract is terminated.
- 3.7. As a Temporary Work Agency, the Intermediary will comply with the AWR in all relevant respects.
- 3.8. Save to the extent any such Loss results from any act or omission of the Employment Business or the Hirer, the Intermediary shall indemnify and keep indemnified the Employment Business (or, as the case may be, the Hirer) against any Losses the Employment Business (or the Hirer) may suffer or incur as a result of any claim made by or on behalf of the Agency Worker under the AWR.

## 4. WARRANTIES PROVIDED BY THE INTERMEDIARY

- 4.1. The Intermediary warrants to the Employment Business that:
  - 4.1.1. by entering into and performing its obligations under this Agreement it will not thereby be in breach of any obligation which it owes to any third party;
  - 4.1.2. the Agency Worker has the necessary skills and qualifications to perform the Intermediary Services;
  - 4.1.3. the Intermediary and the Agency Worker providing the Intermediary Services have agreed to opt out of the Conduct Regulations and have signed an agreement to that effect and as such understand that none of the Conduct Regulations apply to this Assignment. Further the Intermediary warrants that it will only supply staff to perform the Intermediary Services who have opted out of the Conduct Regulations;
  - 4.1.4. the Intermediary is not a "managed service company" as defined in either sections 61B or 339A of ITEPA and is not in breach of either the IR35 Legislation or the MSC Legislation;
  - 4.1.5. the remuneration receivable by the Agency Worker in consequence of providing his/ her services constitutes employment income of the Agency Worker apart from Chapter 7 ITEPA;
  - 4.1.6. the Intermediary will comply at all times with ITEPA and the NICs Legislation including in particular in relation to the deduction of the appropriate PAYE and national insurance deductions and payment of the appropriate employers' national insurance contributions;
  - 4.1.7. the Intermediary is incorporated in the UK and that all directors are resident in the UK for tax purposes;
  - 4.1.8. the Intermediary will pay the Agency Worker only into a nominated UK bank account in the Agency Worker's name;
  - 4.1.9. all information the Intermediary provides to the Employment Business in order to comply with the Reporting Requirements and clauses 5.1.11 to 5.1.18 is complete and accurate.
- 4.2. The Intermediary warrants to the Employment Business that the Agency Worker has consented in writing to the Employment Business, any other intermediary involved in supplying the services of the Intermediary and the Agency Worker to the Hirer (now or in the future) and the Hirer:
  - 4.2.1. processing the Agency Worker's personal data for purposes connected with the provision of the Intermediary Services and pursuant to this Agreement; and
  - 4.2.2. exporting and/or processing the Agency Worker's personal data in jurisdictions outside the European Economic Area for purposes connected with the performance of this Agreement.
- 4.3. The Intermediary warrants to the Employment Business that for 12 months after the end of the last Assignment the Intermediary shall not (and shall procure that any Agency Worker shall not) without the prior written consent of the Employment Business, directly or indirectly:
  - 4.3.1. be employed or engaged by any person (other than via the Employment Business) to perform any work or services for either any Hirer, Hirer's Group or any third party, if (i) the Intermediary or any Agency Worker has been introduced to such person by the Employment Business at any time or (ii) the opportunity to perform such work or services has arisen as a direct or indirect result of any Assignment (including as a direct or indirect result of the Intermediary's or Agency Worker's connection with the production team or any other persons working in connection with such Assignment); or
  - 4.3.2. solicit any business from any Hirer in competition with the business of the Employment Business.
- 4.4. The Intermediary shall inform the Employment Business of (i) any work or services it (or any Agency Worker) is offered by or (ii) any actual work or services it (or any Agency Worker) provides for any Hirer or any other person if the work or services are offered or provided within 12 months of the end of the last Assignment and either of the conditions referred to in Clause 4.3.1 (i) or (ii) apply.

## 5. THE INTERMEDIARY'S OBLIGATIONS

- 5.1. The Intermediary agrees on its own part and on behalf of the Agency Worker as follows:
  - 5.1.1. to co-operate with the Hirer's reasonable instructions and accept the direction of any responsible person in the Hirer's organisation within the scope of the Assignment;
  - 5.1.2. to observe any relevant rules and regulations of the Hirer's establishment or the premises where the Intermediary Services are being provided which have been brought to the attention of the Intermediary or which the Intermediary might reasonably be expected to ascertain including but not limited to those relating to health and safety to the extent that they are reasonably applicable to the Intermediary and the Agency Worker;
  - 5.1.3. to take all reasonable steps to safeguard its own safety, the safety of the Agency Worker and the safety of any other person who may be affected by the actions of the Agency Worker whilst on the Assignment;
  - 5.1.4. to comply with the Data Protection Laws in respect of any personal data which the Intermediary is granted access to for the purpose of or by reason of the performance of the Intermediary Services;
  - 5.1.5. not at any time to divulge to any person, nor use for its own or any other person's benefit, any Confidential Information relating to the Hirer's or the Employment Business's employees, business affairs, transactions or finances;

- 5.1.6. not to engage in any conduct detrimental to the interests of the Employment Business and/or the Hirer which includes any conduct which could bring the Employment Business and/or the Hirer into disrepute and/or which results in the loss of custom or business by either the Employment Business or the Hirer;
- 5.1.7. not to commit any act or omission constituting unlawful discrimination against or harassment of any member of the Employment Business's or the Hirer's staff;
- 5.1.8. not to sub-contract or assign to any third party any of the Intermediary Services which it is required to perform under any Assignment;
- 5.1.9. to provide the Hirer and/or the Employment Business with any progress reports as may be requested from time to time;
- 5.1.10. to notify the Employment Business forthwith in writing if it should become insolvent, or if any of the arrangements set out in clauses 9.2.5 to 9.2.7 apply;
- 5.1.11. to confirm that the remuneration receivable by the Agency Worker in consequence of providing his/ her services constitutes employment income of the Agency Worker apart from Chapter 7 ITEPA;
- 5.1.12. to confirm in writing whether or not the Agency Worker has a material interest (as defined in section 51 ITEPA) in the Intermediary. A "material interest" includes holding more than 5% of the shares of the Intermediary;
- 5.1.13. to comply with all relevant legal obligations, including but not limited to ITEPA, the NICs Legislation, VAT legislation and the Companies Acts;
- 5.1.14. to provide the Employment Business with all such information it may require to comply with (a) the Reporting Requirements where it is the Specified Intermediary or (b) any contractual obligations the Employment Business has to provide information to the Specified Intermediary (where it is a party other than the Employment Business) to enable the Specified Intermediary to comply with its Reporting Requirements;
- 5.1.15. to notify the Employment Business in writing immediately if it becomes subject to a HMRC investigation or compliance activity including but not limited to any of ITEPA, the NICs legislation or VAT legislation;
- 5.1.16. to provide the Employment Business with a copy of the terms under which the Intermediary has engaged the Agency Worker;
- 5.1.17. to provide the Employment Business on request, with any information required to comply with Transparency Regulations;
- 5.1.18. to update the Employment Business promptly where any of the information required under clauses 5.1.11 to 5.1.17 inclusive changes;
- 5.1.19. unless otherwise instructed by the Employment Business, complete and submit to a person nominated by the Employment Business signed time-sheets, in writing or electronic format, confirming when the Intermediary Services were performed within 5 working days of the end of the week in which the Intermediary Services were performed; and
- 5.1.20. receive self billed invoices from the Employment Business and provide any appropriate supporting documents to the Employment Business in accordance with the terms of this Agreement.
- 5.2. As soon as possible prior to the commencement of each Assignment and during each Assignment (as appropriate) and at any time at the Employment Business's request, the Intermediary undertakes to:
- 5.2.1. inform the Employment Business of any Calendar Weeks in the 24 months immediately preceding the start of the Assignment and/or during the relevant Assignment in which the Agency Worker has worked in the same or a similar role with the relevant Hirer via any third party and which the Intermediary and/or the Agency Worker believes count or may count toward the Qualifying Period; and
- 5.2.2. provide the Employment Business 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 Employment Business; and
- 5.2.3. inform the Employment Business if, in the 24 months immediately preceding the start of the Assignment and/or during the relevant Assignment, the Agency Worker has:
- 5.2.3.1. completed two or more assignments with the Hirer;
- 5.2.3.2. completed at least one assignment with the Hirer and one or more earlier assignments with any member of the Hirer's Group; and/or
- 5.2.3.3. worked in more than two roles during an assignment with the Hirer and on at least two occasions worked in a role that was not the same role as the previous role.
- 5.3. If the Agency Worker is unable for any reason to provide the Intermediary Services during the course of an Assignment, the Intermediary should inform the Employment Business as soon as possible, but in any event no later than 1 hour after the commencement of the Assignment or shift. In the event that it is not possible to inform the Employment Business within these timescales, the Intermediary should alternatively inform the Hirer and then the Employment Business as soon as possible.
- 5.4. If, either before or during the course of an Assignment, the Intermediary becomes aware of any reason why it or the Agency Worker supplied to perform the Intermediary Services may not be suitable for an Assignment, the Intermediary shall notify the Employment Business without delay.
- 5.5. The Intermediary acknowledges that any breach of its obligations set out in clause **Error! Reference source not found.** (Warranties provided by the Intermediary) and this clause 5 (The Intermediary's Obligations) may cause the Employment Business to suffer Loss and that the Employment Business reserves the right to recover such Losses from the Intermediary by way of set off or deduction from any sums owed by the Employment Business to the Intermediary.

## 6. OBLIGATIONS OF THE EMPLOYMENT BUSINESS

6.1. Throughout the term of this Agreement the Employment Business will:

- 6.1.1. pay the Intermediary the agreed Intermediary Fees in respect of the provision of the Intermediary Services in accordance with clause 8, subject to any right of set off or deduction in clause 5.5;
- 6.1.2. provide the Intermediary with sufficient information about the Assignment in the relevant Assignment Details Form in order for the Intermediary to arrange for the Intermediary Services to be carried out; and
- 6.1.3. advise the Intermediary of any health and safety information or advice which it receives from the Hirer which may affect the Agency Worker during the Assignment.

## 7. TIMESHEETS AND INVOICING

- 7.1. Upon completion of the Assignment or within 5 days of the Invoice Period specified in the Assignment Details Form the Intermediary shall submit and confirm, electronically via InTime, the time spent by the Intermediary in providing the Intermediary Services. A self billed invoice will be provided by the Employment Business to the Consultancy and will contain the following information;
- a) Description of the Assignment to which the invoice relates, (including the name of the applicable Hirer);
- b) Details of the time worked by the Intermediary on the Intermediary Services, to be specified in hours, days or weeks consistent with the Intermediary Fees payable;
- c) The amount of the Intermediary Fee (plus VAT if applicable) and the calculation of the Intermediary Fees (ie the Intermediary Fee and other payments owed);
- d) If the Intermediary is registered for VAT, information necessary to comply with the requirements for a valid VAT invoice; and
- e) Any other information notified to the Intermediary reasonably required by the Employment Business.
- 7.2. If the Intermediary fails to submit and confirm times when the Intermediary Services were performed within 5 days of the end of each Invoice Period, the Employment Business shall be authorised to submit and confirm hours on behalf of the Intermediary in connection with any Assignment, for which the Employment Business shall charge an administration fee of £5 plus VAT per timesheet (which fee shall be identified on the self billed invoice as an 'Invoice Fee' and which shall be deducted from the Intermediary Fee due to the Intermediary for that Assignment.
- 7.3. In the event of a self billed invoice being submitted by the Employment Business in accordance with clause 7.2 such timesheets and self billed invoices shall be deemed to be accepted by the Intermediary unless the Intermediary notifies the Employment Business of any problem or error with such invoice within 10 working days of the date such invoice is sent to the Intermediary.
- 7.4. Subject to clause 7.5 the Employment Business shall pay the Intermediary for all hours worked regardless of whether the Employment Business has received payment from the Hirer for those hours.
- 7.5. The Employment Business shall make no payment to the Intermediary for work not carried out.

## 8. INTERMEDIARY FEES

- 8.1. The Employment Business will pay the Intermediary the Intermediary Fees within 45 days of submission of [the Intermediary's self billed invoice or upon payment of the Intermediary Fees from the Hirer, whichever is the sooner, subject to:
- 8.1.1. the satisfactory performance of the Intermediary Services;
- 8.1.2. the Intermediary's compliance with this Agreement;
- 8.1.3. the Employment Business's receipt of the Intermediary's invoice in accordance with clause 7 above; and
- 8.2. Subject to clause 8.9, if and when the Agency Worker completes the Qualifying Period the Employment Business reserves the right to vary the Intermediary Fees if there is any variation in the Relevant Terms and Conditions. Any such variation will be as set out in a variation to the relevant Assignment Details Form and the Intermediary shall ensure that, if at any time the Employment Business varies the Intermediary Fees in accordance with this clause 8.2, the Intermediary will, at the same time, make the same variations to the corresponding payments the Intermediary makes to the Agency Worker.
- 8.3. Under the AWR, on completion of the Qualifying Period the Agency Worker may be entitled to paid annual leave (save where the Intermediary is a Temporary Work Agency and it is agreed in the relevant Assignment Details Form that the Agency Worker has an AWR Regulation 10 Contract of Employment) and/or unpaid annual leave in addition to the Agency Worker's entitlement to paid annual leave under the WTR provided by the Intermediary. If this is the case, any such entitlement(s), the date from which any such entitlement(s) will

commence and how any payment for such entitlement accrues in respect of the relevant Assignment will be as set out in the relevant Assignment Details Form or any variation to the relevant Assignment Details Form and the Intermediary will pass this information on to the Agency Worker and, if the Intermediary receives any such payment(s) for leave from the Employment Business, the Intermediary will make the same payment(s) to the Agency Worker.

8.4. Subject to clause 8.9, on completion of the Qualifying Period, the Agency Worker may be entitled to receive a bonus. The Intermediary will, and will procure that the Agency Worker will, comply with any requirements of the Employment Business and/or the Hirer relating to the assessment of the Agency Worker's performance for the purpose of determining whether or not the Agency Worker is entitled to a bonus and the amount of any such bonus. If, subject to satisfying the relevant criteria, the Agency Worker is entitled to receive a bonus, the Employment Business will pay the bonus to the Intermediary and the Intermediary will pay the bonus to the Agency Worker.

8.5. The Intermediary shall be responsible for the deduction of any PAYE Income Tax and National Insurance Contributions and any other taxes and deductions payable in respect of the Agency Worker for any Assignment.

8.6. All payments due from the Employment Business will be made to the Intermediary and not to any third party or Agency Worker. The Employment Business will pay the Intermediary fees into a UK business bank account only.

8.7. The Employment Business shall not be obliged to pay the Intermediary for any periods during which the Intermediary Services are not provided, whether this is due to the Intermediary being unable to provide the Intermediary Services or where the Hirer does not require the Intermediary Services or otherwise in respect of annual leave (save as where may be the case in accordance with clause 8.3), illness or absence of the Agency Worker.

8.8. The Intermediary shall bear the cost of any training which the Agency Worker may require in order to perform the Intermediary Services.

8.9. Clauses 8.2 and 8.4 will not apply where the Agency Worker has an AWR Regulation 10 Contract of Employment.

## 9. TERM AND TERMINATION

9.1. Either of the Employment Business or the Intermediary may terminate the Assignment by giving the other party in writing the period of notice specified in the relevant Assignment Details Form.

9.2. Notwithstanding clauses 9.1 and 9.3 of this Agreement, the Employment Business may without notice and without liability instruct the Intermediary to cease work on an Assignment at any time, where:

9.2.1. the Intermediary has acted in breach of the rules and regulations applicable to third parties providing services to the Hirer or to the Hirer's own staff; or

9.2.2. the Intermediary has committed any serious or persistent breach of any of its obligations under this Agreement; or

9.2.3. the Hirer reasonably believes that the Intermediary has not observed any condition of confidentiality from time to time; or

9.2.4. the Hirer is dissatisfied with the Intermediary's or the Agency Worker's provision of the Intermediary Services and has terminated the Assignment; or

9.2.5. either the Hirer or the Intermediary 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

9.2.6. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Hirer or the Intermediary; or

9.2.7. an order is made for the winding up of the Hirer or the Intermediary, or where the Hirer or the Intermediary 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 this Agreement); or

9.2.8. the Intermediary or the Agency Worker is suspected of any fraud, dishonesty or serious misconduct; or

9.2.9. the Intermediary or the Agency Worker is unable to perform the Intermediary Services for 2 days or more; or

9.2.10. the Employment Business suspects or believes that the Intermediary has not complied with the requirements of ITEPA or the NICs Legislation; or

9.2.11. the Intermediary fails to comply with clause 14.3.

9.3. The Intermediary acknowledges that the continuation of an Assignment is subject to and conditioned by the continuation of the contract entered into between the Employment Business and the Hirer. In the event that the contract between the Employment Business and the Hirer is terminated for any reason the Assignment shall cease with immediate effect without liability to the Intermediary.

9.4. Failure by the Intermediary to give notice of termination as required in clause 9.1 shall constitute a breach of contract and shall entitle the Employment Business to claim damages from the Intermediary for any resulting Losses suffered by the Employment Business.

9.5. For the avoidance of doubt, termination of this Agreement does not constitute a termination of the Representation Agreement.

## 10. INTELLECTUAL PROPERTY RIGHTS

The Intermediary acknowledges that all copyright, trademarks, patents and other intellectual property rights deriving from the Intermediary Services carried out by the Intermediary and the Agency Worker for the Hirer during the Assignment shall belong to the Hirer. Accordingly the Intermediary shall (and shall procure that any relevant Agency Worker shall) execute all such documents and do all such acts as the Employment Business shall from time to time require in order to give effect to its rights pursuant to this clause.

## 11. CONFIDENTIALITY

11.1. In order to protect the confidentiality and trade secrets of any Hirer and the Employment Business and without prejudice to every other duty to keep secret all information given to it or gained in confidence the Intermediary agrees on its own part and on behalf of the Agency Worker as follows:

11.1.1. not at any time whether during or after an Assignment (unless expressly so authorised by the Hirer or the Employment Business as a necessary part of the performance of its duties) to disclose to any person or to make use of any of the trade secrets or the Confidential Information of the Hirer or the Employment Business with the exception of information already in the public domain;

11.1.2. to deliver up to the Hirer or the Employment Business (as directed) at the end of each Assignment all documents and other materials belonging to the Hirer (and all copies) which are in its possession including documents and other materials created by it or the Agency Worker during the course of the Assignment; and

11.1.3. not at any time to make any copy, abstract, summary or précis of the whole or any part of any document or other material belonging to the Hirer except when required to do so in the course of its duties under an Assignment in which event any such item shall belong to the Hirer or the Employment Business as appropriate.

## 12. COMPUTER EQUIPMENT WARRANTY

The Intermediary shall ensure that any computer equipment and associated software which it provides to the Agency Worker for the purpose of providing the Intermediary Services contains anti-virus protection with the latest released upgrade from time to time.

## 13. RESTRICTION

The Intermediary shall not (and shall procure that the Agency Worker shall not) during the Assignment or for a period of 12 months following the termination of the Assignment supply the services of the Agency Worker directly, or through any other person, firm or Employment Business, to any Hirer for which s/he has carried out Assignments at any time during the previous 12 months.

## 14. CONTRACT MONITORING AND AUDITS

14.1. The Employment Business reserves the right to audit the Intermediary on a quarterly basis to ensure compliance with this Agreement and all statutory requirements in relation to all Agency Workers supplied to provide the Intermediary Services including in particular but not limited to ITEPA and the NICs Legislation.

14.2. To assist the Employment Business in its audit the Intermediary will:

14.2.1. maintain such records as are necessary to comply with this Agreement and all statutory requirements in relation to all Agency Workers supplied to provide the Intermediary Services, and will provide copies of the same to the Employment Business on request;

14.2.2. provide the Employment Business with access to its premises and original records relating to all Agency Workers supplied to provide the Intermediary Services.

14.3. If having conducted an audit, the Employment Business requires the Intermediary to take any action the Intermediary shall take such action within the time period specified by the Employment Business. If the Intermediary fails to take such action or to rectify the matter to the Employment Business's satisfaction, the Employment Business may terminate this Agreement in accordance with clause 9.

## 15. LIABILITY

15.1. The Intermediary shall:

15.1.1. be liable for any Losses or injury to any party resulting from the deliberate and/or negligent acts or omissions of the Intermediary or Agency Worker during an Assignment; and

15.1.2. obtain adequate employer's liability insurance, public liability insurance, professional indemnity insurance and any other suitable policies of insurance in respect of the Intermediary and the Agency Worker. The Intermediary shall maintain such insurances for the duration of the Assignment and following termination of the Assignment for the period specified. The Intermediary shall make a copy of the policy available to the Employment Business upon request.

**16. INDEMNITY**

Save to the extent any such Losses results solely from any act or omission of the Employment Business or the Hirer, the Intermediary shall indemnify and keep indemnified the Employment Business against any Losses suffered or incurred by the Employment Business by reason of any proceedings, claims or demands by any third party.

**17. SEVERABILITY**

If any of the provisions of this Agreement 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.

**18. NOTICES**

All notices which are required to be given in accordance with this Agreement shall be in writing and may be delivered personally or by first class prepaid post to the registered office of the party upon whom the notice is to be served or any other address that the party has notified the other party in writing, by email or facsimile transmission. Any such notice shall be deemed to have been served: if by hand when delivered, if by first class post 48 hours following posting and if by email or facsimile transmission, when that email or facsimile is sent.

**19. THIRD PARTY RIGHTS**

19.1. Save as set out in clause 19.2, none of the provisions of this Agreement is intended to be for the benefit of or enforceable by third parties and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

19.2. The Hirer shall be entitled to rely on and enforce the indemnities in clause 3.8 given by the Intermediary in favour of the Hirer, notwithstanding that the Hirer is not a party to this Agreement

**20. TUPE**

The Intermediary shall comply with all of the requirements of TUPE where there is a "relevant transfer" as defined in those regulations.

**21. GOVERNING LAW AND JURISDICTION**

This Agreement is governed by the law of England & Wales and is subject to the exclusive jurisdiction of the Courts of England & Wales.

**I am authorised to sign this Agreement for and on behalf of the Intermediary.**

**Signed for and on behalf of [[CANDIDATE.LTD.COMPANY]] Ltd. (the Intermediary)**

\_\_\_\_\_

[print name here]

\_\_\_\_\_

Date

## Schedule: "Qualifying Period" and "Temporary Work Agency"

For the purpose of the definition of "Qualifying Period" in clause 1.1 of this Agreement, when calculating whether any weeks completed with the Hirer 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 Employment Business, 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:
    - i. ordinary, compulsory or additional maternity leave;
    - ii. ordinary or additional adoption leave;
    - iii. ordinary or additional paternity leave;
    - iv. time off or other leave not listed in paragraphs (iv)i, ii, or iii above; or
    - v. for more than one of the reasons listed in paragraphs (iv)i, ii, iii to iv 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 Hirer'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 Hirer;
  - (vii) wholly due to a strike, lock-out or other industrial action at the Hirer'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 Hirer, any weeks during which the Agency Worker worked for the Hirer before the break shall be carried forward and treated as counting towards the Qualifying Period with any weeks during which the Agency Worker works for the Hirer after the break. In addition, when calculating the number of 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)i, ii, or iii., 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 Hirer 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 [or 5 December 2011] does not count for the purposes of the definition of "Qualifying Period".

"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:

- (a) supplying individuals to work temporarily for and under the supervision and direction of hirers; 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 hirers.
- 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 hirers. For the purpose of this definition, a "hirer" 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.