

TERMS OF BUSINESS WITH THE CLIENT OR HIRER

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APPENDIX I

TERMS OF BUSINESS WITH THE CLIENT FOR THE SUPPLY OF A SELF-EMPLOYED CONSULTANCY WHO HAS NOT OPTED OUT OF THE CONDUCT REGULATIONS (OUTSIDE IR35)

THE PARTIES

- (1) HEADS Recruitment Limited (registered company no. 03443013) of Kimada House 442 Flixton Rd, Flixton, Manchester, M41 6EY ("the Employment Business").
- (2) "The Client" as detailed in Schedule 3, to whom the Consultancy 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 Consultancy is Introduced.

RECITALS

- (A) The Employment Business carries on the business of sourcing and supplying consultancies to provide services to clients of the Employment Business. The Client has instructed the Employment Business to supply a Consultancy to provide certain services, as specified in the Schedule 3 ("the Consultancy Services").
- (B) The Employment Business will introduce a Consultancy to the Client to provide the Consultancy Services to the Client on the terms and subject to the conditions of this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1. In these Terms the following definitions apply: "AWR" means the Agency Workers Regulations 2010; "Assignment" means the Consultancy Services to be performed by the Consultancy Staff for the Client for a period of time during which the Consultancy is supplied by the Employment Business to provide the Consultancy Services to the Client; "Charges" means the charges as notified to the Client at the commencement of the Assignment and which may be varied by the Employment Business from time to time during the Assignment. The charges are comprised of the Consultancy Fees, the Employment Business' commission, and any travel, hotel or other disbursements as may have been agreed with the Client or, if there is no such agreement, such expenses as are reasonable; "Conduct Regulations" means the Conduct of Employment Agencies and Employment Businesses Regulations 2003; "Consultancy" means the person, firm or corporate body introduced to the Client by the Employment Business to carry out an Assignment (and, save where otherwise indicated, includes Consultancy Staff and any third party to whom the provision of the Consultancy Services is assigned or sub-contracted with the prior approval of the Client and any officer, employee, worker or representative of any such third party); "Consultancy Fees" means the fees payable to the Consultancy for the provision of the Consultancy Services; "Consultancy Staff" means any officer, employee, worker or representative of the Consultancy supplied to provide the Consultancy Services (and, save where otherwise indicated, includes any officer, employee, worker or representative of any third party to whom the provision of the Consultancy Services is assigned or sub-contracted with the prior approval of the Client); "Data Protection Laws" means the Data Protection Act 1998, any applicable statutory or regulatory provisions and all European Directives and regulations in force from time to time relating to the protection and transfer of personal data; "Engagement" means the engagement, employment or use of the Consultancy's services or the services of any Consultancy Staff, by the Client or by any third party to whom the Consultancy and/or any Consultancy Staff have been introduced by the Client, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, an agency, licence, franchise or partnership arrangement, or any other engagement or through another employment business; and "Engage", "Engages" and "Engaged" shall be construed accordingly; "Introduction" means (i) the passing to the Client of a curriculum vitae or information which identifies the Consultancy or Consultancy Staff or (ii) the Client's interview of a Consultancy or Consultancy Staff (in person, by telephone or by any other means), following the Client's instruction to the Employment Business to supply a consultancy; or (iii) the supply of a Consultancy; and, in any case, which leads to an Engagement of that Consultancy or Consultancy Staff; and "Introduces" shall be construed accordingly; "Introduction Fee" means the fee payable by the Client in accordance with clause 7; "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; "NICs Legislation" means the Social Security (Categorisation of Earners) Regulations 1978; "Remuneration" includes gross base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments taxable, (and, where applicable, non-taxable) payable to or receivable by the Consultancy or the Consultancy Staff for services rendered to or on behalf of the Client. Where a company car is provided, a notional amount of £3000 will be added to the sums paid to the Consultancy in order to calculate the Employment Business' fee; "Transfer Fee" means the fee set out in Schedule 1 and payable in accordance with clause 8 below and Regulation 10 of the Conduct Regulations; "Vulnerable Person" means any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention, and includes any person under the age of 18..
- 1.2. Unless the context otherwise requires, 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 CONTRACT

- 2.1 This Agreement together with the attached Schedules ("the Agreement") constitutes the contract between the Employment Business and the Client for the supply of the Consultancy Services by the Employment Business to the Client, and is deemed to be accepted by the Client by virtue of its request for, interview with, or Engagement of a Consultancy or the passing of any information about the Consultancy to any third party following an Introduction.
- 2.2 This Agreement contains the entire agreement between the Parties and unless otherwise agreed in writing by a director of the Employment Business shall prevail over any terms of business or purchase conditions (or similar) put forward by the Client
- 2.3 Subject to clause 6.2 no variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between a director of the Employment Business 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 which such varied terms shall apply.
- 2.4 The Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973 when Introducing Consultancies for Assignments with the Client.
- 2.5 The Client acknowledges that the Consultancy and the Consultancy Staff carrying out the Assignment have not opted out of the Conduct Regulations and further that any person to whom the performance of the Consultancy Services has been assigned or sub-contracted has not opted out of the Conduct Regulations and that none of the Conduct Regulations apply to any Assignments governed by this Agreement
- 2.6 The Client acknowledges that the Consultancy may supply any of the Consultancy Staff to perform the Consultancy Services and where the Consultancy is unable to provide any part of the Consultancy Services for whatever reason the Consultancy shall be entitled to assign or sub-contract the performance of the Consultancy Services provided that the Employment Business and the Client are reasonably satisfied that the assignee or sub-contractor has the required skills, qualifications, resources and personnel to provide the Consultancy 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 Consultancy and the Employment Business. The Client shall not unreasonably withhold or delay any approval sought for the assignment or sub-contracting of the Consultancy Services.
- 2.7 The Client acknowledges that the Consultancy shall be permitted to determine how it will provide the Consultancy Services and will have the flexibility to determine the number of hours required and the times worked, to complete the Consultancy Services, subject to the Consultancy complying with any reasonable operational requirements of the Client. The Consultancy will be at liberty to determine the location at which it will provide the Consultancy Services, but where the Consultancy Services are undertaken at the Client's site, the Consultancy will comply with any reasonable requirements relating to working hours, and any other operational requirements in relation to the Client's site.

3. CLIENT OBLIGATIONS

- 3.1 To enable the Employment Business to comply with its obligations under the Conduct Regulations the Client undertakes to provide to the Employment Business details of the position which the Client seeks to fill, including the following:
- 3.1.1. the type of work that the Consultancy would be required to do;
- 3.1.2. the location and hours of work;
- 3.1.3. the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Consultancy Staff to possess in order to work in the position;
- 3.1.4. any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
- 3.1.5. the date the Client requires the Consultancy to commence the Assignment; and
- 3.1.6. the duration or likely duration of the Assignment.

4. INFORMATION TO BE PROVIDED

- 4.1. When making an Introduction of a Consultancy to the Client the Employment Business shall inform the Client:
- 4.1.1. of the identity of the Consultancy and that of the Consultancy Staff supplied by the Consultancy to carry out the Assignment;
- 4.1.2. that the Consultancy Staff has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment;

- 4.1.3. that the Consultancy is Engaged by the Employment Business under a contract for services; and that the Consultancy Staff are willing to work in the Assignment; and
- 4.1.4. the Charges.
- 4.2. 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 business day (excluding Saturday, Sunday and any Public or Bank Holiday) following, save where the Consultancy is Introduced for an Assignment in the same position as one in which the Consultancy had previously been supplied within the previous 5 business days and such information has already been given to the Client and remains unchanged, unless the Client requests that the information be resubmitted.
- 5. VERIFICATION OF EXECUTION OF THE CONSULTANCY SERVICES**
- 5.1. At the end of each week of the Assignment or at the end of the Assignment where the Assignment is for a period of less than 1 week or is completed or finished before the end of a week the Client shall verify the execution of the Consultancy Services by signature of a form provided to the Client for this purpose.
- 5.2. Verification by the Client of the execution of the Consultancy Services constitutes acceptance by the Client that the Consultancy Services have been provided satisfactorily and in accordance with this Agreement. Failure to verify execution in writing does not affect the Client's obligation to pay the Charges in respect of the work done. In the event that the Client is dissatisfied with the work performed by the Contractor the provisions of clause 10.1 and 11 below shall apply.
- 6. CHARGES**
- 6.1. The Client agrees to pay the Charges. VAT is payable at the applicable rate on the entirety of the Charges.
- 6.2. The Employment Business reserves the right to vary the Charges agreed with the Client, by giving written notice to the Client, in order to comply with any additional liability imposed by statute or other legal requirement or entitlement.
- 6.3. The Charges are invoiced to the Client on a weekly basis and are payable within 14 days as Standard, or as detailed on Schedule 3(Letter of Assignment).
- 6.4. The Employment Business reserves the right to charge interest on invoiced amounts unpaid by the due date at the rate of 4% per annum above the base rate from time to time of the National Westminster Bank from the due date until the date of payment.
- 6.5. The Client's obligations under this clause 5 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.
- 6.6. The Client's obligations under this clause 6 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.
- 7. PAYING THE CONSULTANCY**
- The Employment Business is responsible for paying the Consultancy.
- 8. TRANSFER FEES**
- 8.1. The Client shall be liable to pay a Transfer Fee if the Client Engages the Consultancy or any Consultancy Staff Introduced by the Employment Business other than via the Employment Business, or introduces the Consultancy or any Consultancy Staff to a third party and such introduction results in an Engagement of the Consultancy or any Consultancy Staff by the third party other than via the Employment Business and:
- 8.1.1. where the Consultancy has been supplied by the Employment Business, such Engagement takes place during the Assignment or within the Relevant Period; or
- 8.1.2. where the Consultancy has not been supplied, such Engagement takes place within 6 months from the date of the Introduction to the Client.
- The Transfer Fee will be calculated in accordance with Schedule 1.
- 8.2. If the Client wishes to Engage the Consultancy other than via the Employment Business, without liability to pay a Transfer Fee the Client may, on giving 30 days written notice to the Employment Business, engage the Consultancy for the Period of Extended Hire specified in Schedule 1.
- 8.3. During such Period of Extended Hire the Employment Business shall supply the Consultancy on the same terms on which it 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 Employment Business received the notice in clause 8.2 and the Client shall continue to pay the Charges. If the Employment Business is unable to supply the Consultancy 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 Consultancy on the same terms as the Assignment, but the Consultancy 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 Consultancy before being Engaged by the Client. If the Client fails to give notice of its intention to Engage the Consultancy other than via the Employment Business before the Engagement takes place, the parties agree that the Transfer Fee shall be due in full.
- 8.4. Where prior to the commencement of the Client's Engagement other than via the Employment Business, the Employment Business and the Client agree that such Engagement will be on the basis of a fixed term of less than 12 months, the Employment Business may, in its absolute discretion, reduce the Transfer Fee as calculated in accordance with Schedule 1 pro-rata. Such reduction is subject to the Client Engaging the Consultancy for the agreed fixed term. Should the Client extend the Consultancy's Engagement or re-Engage the Consultancy within 12 months from the commencement of the initial Engagement the Employment Business reserves the right to recover the balance of the Transfer Fee.
- 8.5. No refund of the Transfer Fee will be paid in the event that the Engagement of the Consultancy other than via the Employment Business by the Client or a third party to which the Client introduces the Consultancy or any Consultancy Staff, subsequently terminates or terminates before the end of the fixed term referred to in clause 8.4.
- 8.6. VAT is payable at the applicable rate in addition to any Transfer Fee due.
- 9. SUITABILITY CHECKS AND INFORMATION TO BE PROVIDED IN SPECIAL SITUATIONS**
- 9.1. Where:
- 9.1.1. the Consultancy or the Agency Worker is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment the Employment Business will take all reasonably practicable steps to obtain and offer to provide to the Hirer copies of any relevant qualifications or authorisations of the Agency Worker; and
- 9.1.2. in addition, where the Assignment involves working with, caring for or attending one or more Vulnerable Persons, the Employment Business will take all reasonably practicable steps to obtain and offer to provide copies to the Hirer of two references from persons who are not relatives of the Agency Worker and who have agreed that the references they provide may be disclosed to the Hirer;
- and such other reasonably practicable steps as are required to confirm that the Consultancy or the Agency Worker supplied to do the work is suitable for the Assignment. If the Employment Business has taken all reasonably practicable steps to obtain the information above and has been unable to do so fully it shall inform the Hirer of the steps it has taken to obtain this information in any event.
- 9.2. The Client shall advise the Employment Business at the time of instructing the Employment Business to supply a Consultancy, whether during the course of the Assignment, the Consultancy or the Consultancy Staff will be required to work with, care for or attend one or more Vulnerable Persons or engage in activity or otherwise be working in a position covered by the Safeguarding Vulnerable Groups Act.
- 9.3. The Client shall assist the Employment Business by providing any information required to allow the Employment Business to comply with its statutory obligations under the Safeguarding Vulnerable Groups Act and to allow the Employment Business to select a suitable Consultancy for the Assignment.
- 9.4. In particular in the event that the Client removes a Consultancy from an Assignment in circumstances which would require the Employment Business to provide information to the Independent Safeguarding Authority (or equivalent authority) under the Safeguarding Vulnerable Groups Act, the Client will provide sufficient information to the Employment Business to allow it to discharge its statutory obligations.
- 10. UNSUITABILITY OF THE CONSULTANCY**
- 10.1. The Client undertakes to satisfy itself with the Consultancy's suitability in carrying out the Consultancy Services. If the Client reasonably considers that the services of the Consultancy are unsatisfactory, the Client must notify the Employment Business in writing immediately and may terminate the Assignment in accordance with clause 11.2.
- 10.2. The Employment Business shall notify the Client immediately if it receives or otherwise obtains information which gives the Employment Business reasonable grounds to believe that a Consultancy 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
- 10.3. The Client shall notify the Employment Business immediately and without delay and in any event within 4 hours if the Consultancy or the Consultancy Staff fails to provide the Consultancy Services or has notified the Client that they are unable to provide the Consultancy Services for any reason.
- 11. TERMINATION OF THE ASSIGNMENT**
- 11.1. The Assignment will terminate when the Consultancy Services have been completed.
- 11.2. Notwithstanding the provisions of clause 8.1 the Client may terminate the Assignment with immediate effect by notice in writing to the Employment Business where:
- 11.2.1. the Consultancy has acted in breach of any statutory or other reasonable rules and regulations applicable to them while providing the Consultancy Services; or
- 11.2.2. the Client reasonably believes that the Consultancy has not observed any condition of confidentiality applicable to the Consultancy from time to time; or
- 11.2.3. the Client reasonably considers that the Consultancy's provision of the Consultancy Services is unsatisfactory.
- 11.3. The Employment Business may terminate an Assignment with immediate effect by notice in writing if:
- 11.3.1. the Client is in wilful or persistent breach of its obligations under this Agreement and where the breach is capable of being remedied, fails to remedy the breach within 7 days of receiving written notice from the Employment Business to do so; or
- 11.3.2. the Client fails to pay any amount which is due to the Employment Business in full and on the date that the payment falls due; or
- 11.3.3. 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
- 11.3.4. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Client; or
- 11.3.5. 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 this Agreement); or
- 11.3.6. (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; or

11.3.7. the Client supervises, directs or controls the Consultancy Staff; or

11.3.8. the Client provides to the Employment Business a document which falsely states that the Consultancy Staff do not work under (or are not subject to) supervision, direction or control of any person or if the Client seeks to supervise, direct or control the Consultancy Staff in contravention of this Agreement

12. CONFIDENTIALITY AND DATA PROTECTION

All information relating to a Consultancy is confidential and where that information relates to an individual is also subject to the Data Protection Laws and is provided solely for the purpose of providing Consultancy Services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times. In addition information relating to the Employment Business' business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.

13. INTELLECTUAL PROPERTY RIGHTS

All copyright, trademarks, patents and other intellectual property rights deriving from the provision of the Consultancy Services by the Consultancy or any third party to whom the Consultancy Services are assigned or sub-contracted for the Client during the Assignment shall belong to the Client, save such rights as may be expressly owned or retained by the Consultancy and set out in Schedule 3 to this Agreement. Accordingly the Employment Business shall use its reasonable endeavours to ensure that the Consultancy shall (and any relevant member of the Consultancy Staff shall) execute all such documents and do all such acts in order to give effect to the Client's rights pursuant to this clause.

14. LIABILITY

- 14.1. Whilst reasonable efforts are made by the Employment Business to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from the Consultancy and to provide the same in accordance with the Assignment details as provided by the Client, no liability is accepted by the Employment Business for any Losses arising from the failure to provide a Consultancy for completion of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Consultancy or if the Consultancy terminates the Assignment for any reason. For the avoidance of doubt, the Employment Business 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.
- 14.2. The Client warrants that it does not (and does not have the right to) supervise, direct or control the Consultancy or the Consultancy Staff. The Client will notify the Employment Business in writing if it exercises supervision, direction or control, or seeks the right to supervise, direct or control the Consultancy or the Consultancy Staff in which case the Employment Business may terminate the Agreement and/ or any Assignments under the Agreement in accordance with clause 11.3. In addition the Client agrees that the Employment Business does not (and does not have the right) to supervise, direct or control the Consultancy or the Consultancy Staff. Furthermore no member of the Consultancy Staff is an agency worker as defined under the AWR.
- 14.3. The Client shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Consultancy and about any requirements imposed by law or by any professional body, which must be satisfied if the Consultancy is to fill the Assignment. The Client will comply in all respects with all relevant statutes, by-laws, codes of practice and legal requirements including the provision of adequate public liability insurance in respect of the Consultancy.
- 14.4. The Client undertakes not to request the supply of a Consultancy to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by a worker who has been transferred by the Client to perform the duties of a person on strike or taking official industrial action.
- 14.5. The Client shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business 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 (and/or any supporting or consequential secondary legislation relating thereto) or the NICs Legislation) arising out of any Assignment or arising out of any non-compliance with, and/or as a result of any breach of, this Agreement by the Client.
- 14.6. The Client undertakes that it knows of no reason why it would be detrimental to the interests of the Consultancy for the Consultancy to fill the Assignment.

15. NOTICES

All notices which are required to be given in accordance with these Terms 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.

16. 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.

17. RIGHTS OF THIRD PARTIES

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.

18. LAW AND JURISDICTION

These Terms are governed by the law of England and are subject to the exclusive jurisdiction of the Courts of England & Wales.

APPENDIX II

TERMS OF BUSINESS WITH THE CLIENT FOR THE SUPPLY OF A SELF-EMPLOYED CONSULTANCY WHO HAS OPTED OUT OF THE CONDUCT REGULATIONS (OUTSIDE IR35)

THE PARTIES

- (1) HEADS Recruitment Limited (registered company no. 03443013) of Kimada House 442 Flixton Rd, Flixton, Manchester, M41 6EY ("the Employment Business").
- (2) "The Client" as detailed in Schedule 3, to whom the Consultancy 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 Consultancy is Introduced.

RECITALS

- (A) The Employment Business carries on the business of sourcing and supplying consultancies to provide services to Clients of the Employment Business. The Client has instructed the Employment Business to supply a Consultancy to provide certain services, as specified in the attached schedules ("the Schedules") ("the Consultancy Services").
- (B) The Employment Business will introduce a Consultancy to the Client to provide the Consultancy Services to the Client on the terms and subject to the conditions of this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1. In these Terms the following definitions apply: "AWR" means the Agency Workers Regulations 2010; "Assignment" means the Consultancy Services to be performed by the Consultancy Staff for the Client for a period of time during which the Consultancy is supplied by the Employment Business to provide the Consultancy Services to the Client; "Charges" means the charges as notified to the Client at the commencement of the Assignment and which may be varied by the Employment Business from time to time during the Assignment. The charges are comprised of the Consultancy Fees, the Employment Business' commission, and any travel, hotel or other disbursements as may have been agreed with the Client or, if there is no such agreement, such expenses as are reasonable; "Conduct Regulations" means the Conduct of Employment Agencies and Employment Businesses Regulations 2003; "Consultancy" means the person, firm or corporate body Introduced to the Client by the Employment Business to carry out an Assignment (and, save where otherwise indicated, includes Consultancy Staff and any third party to whom the provision of the Consultancy Services is assigned or sub-contracted with the prior approval of the Client and any officer, employee, worker or representative of any such third party); "Consultancy Fees" means the fees payable to the Consultancy for the provision of the Consultancy Services; "Consultancy Staff" means any officer, employee, worker or representative of the Consultancy supplied to provide the Consultancy Services (and, save where otherwise indicated, includes any officer, employee, worker or representative of any third party to whom the provision of the Consultancy Services is assigned or sub-contracted with the prior approval of the Client); "Data Protection Laws" means the Data Protection Act 1998, any applicable statutory or regulatory provisions and all European Directives and regulations in force from time to time relating to the protection and transfer of personal data; "Engagement" means the engagement, employment or use of the Consultancy's services or the services of any Consultancy Staff, by the Client or by any third party to whom the Consultancy and/or any Consultancy Staff have been introduced by the Client, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, an agency, licence, franchise or partnership arrangement, or any other engagement or through another employment business; and "Engage", "Engages" and "Engaged" shall be construed accordingly; "Introduction" means (i) the passing to the Client of a curriculum vitae or information which identifies the Consultancy or Consultancy Staff or (ii) the Client's interview of a Consultancy or Consultancy Staff (in person, by telephone or by any other means), following the Client's instruction to the Employment Business to supply a consultancy; or (iii) the supply of a Consultancy; and, in any case, which leads to an Engagement of that Consultancy or Consultancy Staff; and "Introduces" shall be construed accordingly; "Introduction Fee" means the fee payable by the Client in accordance with clause 7; "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; "NICs Legislation" means the Social Security (Categorisation of Earners) Regulations 1978; "Remuneration" includes gross base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments taxable, (and, where applicable, non-taxable) payable to or receivable by the Consultancy or the Consultancy Staff for services rendered to or on behalf of the Client. Where a company car is provided, a notional amount of £3000 will be added to the sums paid to the Consultancy in order to calculate the Employment Business' fee.
- 1.2. Unless the context otherwise requires, 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 CONTRACT

- 2.1 This Agreement together with the Schedules ("the Agreement") constitutes the contract between the Employment Business and the Client for the supply of the Consultancy Services by the Employment Business to the Client, and is deemed to be accepted by the Client by virtue of its request for, interview with, or Engagement of a Consultancy or the passing of any information about the Consultancy to any third party following an Introduction.
- 2.2 This Agreement contains the entire agreement between the Parties and unless otherwise agreed in writing by a director of the Employment Business shall prevail over any terms of business or purchase conditions (or similar) put forward by the Client
- 2.3 Subject to clause 5.2 no variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between a director of the Employment Business 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 which such varied terms shall apply.
- 2.4 The Client acknowledges that the Consultancy and the Consultancy Staff carrying out the Assignment have opted out of the Conduct Regulations and further that any person to whom the performance of the Consultancy Services has been assigned or sub-contracted has opted out of the Conduct Regulations and that none of the Conduct Regulations apply to any Assignments governed by this Agreement
- 2.5. The Client acknowledges that the Consultancy may supply any of the Consultancy Staff to perform the Consultancy Services and where the Consultancy is unable to provide any part of the Consultancy Services for whatever reason the Consultancy shall be entitled to assign or sub-contract the performance of the Consultancy Services provided that the Employment Business and the Client are reasonably satisfied that the assignee or sub-contractor has the required skills, qualifications, resources and personnel to provide the Consultancy 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 Consultancy and the Employment Business. The Client shall not unreasonably withhold or delay any approval sought for the assignment or sub-contracting of the Consultancy Services.
- 2.6. The Client acknowledges that the Consultancy shall be permitted to determine how it will provide the Consultancy Services and will have the flexibility to determine the number of hours required and the times worked, to complete the Consultancy Services, subject to the Consultancy complying with any reasonable operational requirements of the Client. The Consultancy will be at liberty to determine the location at which it will provide the Consultancy Services, but where the Consultancy Services are undertaken at the Client's site, the Consultancy will comply with any reasonable requirements relating to working hours, and any other operational requirements in relation to the Client's site.

3. INFORMATION TO BE PROVIDED

Prior to the commencement of the Assignment, or if this is not practical, upon commencement of the Assignment, the Employment Business will send to the Client the information set out in Schedule 3.

4. VERIFICATION OF EXECUTION OF THE CONSULTANCY SERVICES

- 4.1. At the end of each week of the Assignment or at the end of the Assignment where the Assignment is for a period of less than 1 week or is completed or finished before the end of a week the Client shall verify the execution of the Consultancy Services by signature of a form provided to the Client for this purpose.
- 4.2. Verification by the Client of the execution of the Consultancy Services constitutes acceptance by the Client that the Consultancy Services have been provided satisfactorily and in accordance with this Agreement. Failure to verify execution in writing does not affect the Client's obligation to pay the Charges in respect of the work done. In the event that the Client is dissatisfied with the work performed by the Contractor the provisions of clause 8 below shall apply.

5. CHARGES

- 5.1. The Client agrees to pay the Charges. VAT is payable at the applicable rate on the entirety of the Charges.
- 5.2. The Employment Business reserves the right to vary the Charges agreed with the Client, by giving written notice to the Client, in order to comply with any additional liability imposed by statute or other legal requirement or entitlement.
- 5.3. The Charges are invoiced to the Client on a weekly basis and are payable within 14 days as Standard, or as detailed on Schedule 3(Letter of Assignment).
- 5.4. The Employment Business reserves the right to charge interest on invoiced amounts unpaid by the due date at the rate of 4% per annum above the base rate from time to time of the NatWest Bank from the due date until the date of payment.
- 5.5. The Client's obligations under this clause 5 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.

6. PAYING THE CONSULTANCY

The Employment Business is responsible for paying the Consultancy Fees.

7. INTRODUCTION FEES



- 7.1. The Client shall be liable to pay the Employment Business an Introduction Fee where the Employment Business Introduces the Consultancy to the Client and:
- 7.1.1. the Client Engages the Consultancy or any Consultancy Staff other than through the Employment Business within a period of 6 months from the termination of the Assignment in respect of which the Consultancy or Consultancy Staff was supplied, or if there was no supply, within 6 months of the Introduction of the Consultancy by the Employment Business to the Client; or
- 7.1.2. where the Client introduces the Consultancy to a third party and such introduction results in an Engagement of the Consultancy or any Consultancy Staff by the third party other than through the Employment Business either during the Assignment or within 6 months from the termination of the Assignment.
- 7.2. The Introduction Fee will be calculated at 15% of the Remuneration payable to the Consultancy. Where the amount of the Remuneration payable to the Consultancy is not known, the Introduction Fee will be calculated by multiplying the hourly Charges by 250
- 7.3. No refund of the Introduction Fee will be paid in the event that the Engagement subsequently terminates.
- 7.4. VAT is payable in addition to any Introduction Fee due.
- 8. TERMINATION OF THE ASSIGNMENT**
- 8.1. The Assignment will terminate when the Consultancy Services have been completed.
- 8.2. Notwithstanding the provisions of clause 8.1 the Client may terminate the Assignment with immediate effect by notice in writing to the Employment Business where:
- 8.2.1. the Consultancy has acted in breach of any statutory or other reasonable rules and regulations applicable to them while providing the Consultancy Services; or
- 8.2.2. the Client reasonably believes that the Consultancy has not observed any condition of confidentiality applicable to the Consultancy from time to time; or
- 8.2.3. the Client reasonably considers that the Consultancy's provision of the Consultancy Services is unsatisfactory.
- 8.3. The Employment Business may terminate an Assignment with immediate effect by notice in writing if:
- 8.3.1. the Client is in wilful or persistent breach of its obligations under this Agreement and where the breach is capable of being remedied, fails to remedy the breach within 7 days of receiving written notice from the Employment Business to do so; or
- 8.3.2. the Client fails to pay any amount which is due to the Employment Business in full and on the date that the payment falls due; or
- 8.3.3. 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
- 8.3.4. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Client; or
- 8.3.5. 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 this Agreement); or
- 8.3.6. (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; or
- 8.3.7. the Client supervises, directs or controls the Consultancy Staff.
- 8.3.8. the Client provides to the Employment Business a document which falsely states that the Consultancy Staff do not work under (or are not subject to) supervision, direction or control of any person or if the Client seeks to supervise, direct or control the Consultancy Staff in contravention of this Agreement
- 9. CONFIDENTIALITY AND DATA PROTECTION**
- All information relating to a Consultancy is confidential and where that information relates to an individual is also subject to the Data Protection Laws and is provided solely for the purpose of providing Consultancy Services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times. In addition information relating to the Employment Business' business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.
- 10. INTELLECTUAL PROPERTY RIGHTS**
- All copyright, trademarks, patents and other intellectual property rights deriving from the provision of the Consultancy Services by the Consultancy or any third party to whom the Consultancy Services are assigned or sub-contracted for the Client during the Assignment shall belong to the Client, save such rights as may be expressly owned or retained by the Consultancy and set out in Schedule 3 to this Agreement. Accordingly the Employment Business shall use its reasonable endeavours to ensure that the Consultancy shall (and any relevant member of the Consultancy Staff shall) execute all such documents and do all such acts in order to give effect to the Client's rights pursuant to this clause.
- 11. LIABILITY**
- 11.1. Whilst reasonable efforts are made by the Employment Business to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from the Consultancy and to provide the same in accordance with the Assignment details as provided by the Client, no liability is accepted by the Employment Business for any Losses arising from the failure to provide a Consultancy for completion of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Consultancy or if the Consultancy terminates the Assignment for any reason. For the avoidance of doubt, the Employment Business 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.
- 11.2. The Client warrants that it does not (and does not have the right to) supervise, direct or control the Consultancy or the Consultancy Staff. The Client will notify the Employment Business in writing if it exercises supervision, direction or control, or seeks the right to supervise, direct or control the Consultancy or the Consultancy Staff in which case the Employment Business may terminate the Agreement and/ or any Assignments under the Agreement in accordance with clause 8.3. In addition the Client agrees that the Employment Business does not (and does not have the right) to supervise, direct or control the Consultancy or the Consultancy Staff. Furthermore no member of the Consultancy Staff is an agency worker as defined under the AWR
- 11.3. The Client shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Consultancy and about any requirements imposed by law or by any professional body, which must be satisfied if the Consultancy is to fill the Assignment. The Client will comply in all respects with all relevant statutes, by-laws, codes of practice and legal requirements including the provision of adequate public liability insurance in respect of the Consultancy.
- 11.4. The Client shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business 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 (and/or any supporting or consequential secondary legislation relating thereto) or the NICs Legislation arising out of any Assignment or arising out of any non-compliance with and/or as a result of any breach of this Agreement by the Client.
- 12. NOTICES**
- All notices which are required to be given in accordance with these Terms 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.
- 13. 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.
- 14. RIGHTS OF THIRD PARTIES**
- 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.
- 15. LAW AND JURISDICTION**
- These Terms are governed by the law of England and are subject to the exclusive jurisdiction of the Courts of England & Wales.

APPENDIX III

TERMS OF BUSINESS WITH A HIRER FOR THE SUPPLY OF A LIMITED COMPANY CONTRACTOR WHO HAS NOT OPTED OUT OF THE CONDUCT REGULATIONS (WITHIN IR35)

THE PARTIES

- (1) HEADS Recruitment Limited (registered company no. 3443013) Kimada House, 442 Flixton Road, Manchester. M41 6EY ("the Employment Business").
- (2) "The Hirer" as detailed in the Assignment Details Form, to whom the Intermediary is introduced. For the avoidance of doubt the Hirer shall also include any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Intermediary is introduced.

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Terms the following definitions apply: "Agency Worker" means any officer, employee, worker or representative of the Intermediary supplied to provide the Intermediary Services; "AWR" means the Agency Workers Regulations 2010; "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 provide Intermediary Services to the Hirer; "Assignment Details Form" means written confirmation of the assignment details agreed with the Hirer prior to commencement of the Assignment; "AWR Claim" means any complaint or claim to a tribunal or court made by or on behalf of the Agency Worker against the Hirer and/or the Employment Business for any breach of the AWR; "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 Hirer at the commencement of the Assignment and which may be varied by the Employment Business from time to time during the Assignment. The charges are comprised of the Intermediary's fees, the Employment Business' commission, and any travel, hotel or other disbursements as may have been agreed with the Hirer or, if there is no such agreement, such expenses as are reasonable; "Comparable Employee" means as defined in Schedule 2 to these Terms; "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 Laws" means the Data Protection Act 1998, any applicable statutory or regulatory provisions and all European Directives and regulations in force from time to time relating to the protection and transfer of personal data; "Engagement" means the engagement, employment or use of the Intermediary's services or the services of the Agency Worker, by the Hirer or by any third party to whom they have been introduced by the Hirer, directly or indirectly, on a permanent or temporary basis whether under a contract of service or for services, or an agency, licence, 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'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" means the person, firm or corporate body introduced to the Hirer by the Employment Business to carry out an Assignment (and, save where otherwise indicated, includes any Agency Worker); "Introduction" means (i) the passing to the Hirer of a curriculum vitae or information which identifies the Intermediary or Agency Worker (ii) the Hirer's interview of an Intermediary or Agency Worker (in person, by telephone or by any other means), following the Hirer's instruction to the Employment Business to supply a temporary worker; or (iii) the supply of an Intermediary; and, in any case, which leads to an Engagement of that temporary worker, Intermediary or Agency Worker; and "Introduces" and "Introducing" shall be construed accordingly; "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; "NICs Legislation" means the Social Security (Categorisation of Earners) Regulations 1978; "Period of Extended Hire" means any additional period that the Hirer wishes the Intermediary to be supplied for beyond the duration of the original Assignment or series of Assignments as an alternative to paying a Transfer Fee; "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 Schedule 2 to this Agreement; "Relevant Period" means whichever ends the later of (a) the period of 8 weeks commencing on the day after the last day on which the Intermediary worked for the Hirer having been supplied by the Employment Business; or (b) the period of 14 weeks commencing on the first day on which the Intermediary worked for the Hirer having been supplied by the Employment Business or 14 weeks from the first day of the most recent Assignment where there has been a break of more than 6 weeks (42 days) since any previous Assignment; "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) any 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, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) payable to or receivable by the Intermediary for services rendered to or on behalf of the Hirer. Where a company car is provided, a notional amount of £3000 will be added to the sums paid to the Intermediary in order to calculate the Employment Business' fee; "Temporary Work Agency" means as defined in Schedule 2 to this agreement; "Transfer Fee" means the fee payable in accordance with clause 8 below and Regulation 10 of the Conduct Regulations; "Vulnerable Person" means any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention, and includes any person under the age of eighteen.
- 1.2 Unless the context otherwise requires, 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 Schedules and any applicable Assignment Details Form constitutes the contract ("the Agreement") between the Employment Business and the Hirer for the supply of the Intermediary Services by the Employment Business to the Hirer, and is deemed to be accepted by the Hirer by virtue of its request for, interview with, or Engagement of an Intermediary or the passing of any information about the Agency Worker or Intermediary to any third party following an Introduction.
- 2.2. This Agreement contains the entire agreement between the Parties and unless otherwise agreed in writing by a director of the Employment Business shall prevail over any terms of business or purchase conditions (or similar) put forward by the Hirer.
- 2.3. Subject to Clause 6.2 no variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between a director of the Employment Business and the Hirer and are set out in writing and a copy of the varied terms is given to the Hirer stating the date on or after which such varied terms shall apply.
- 2.4. The Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973) when Introducing an Intermediary for Assignments with the Hirer.
- 2.5. The Hirer acknowledges that the Intermediary and the Agency Worker carrying out the Assignment have not opted out of the Conduct Regulations and that all of the Conduct Regulations apply to this Agreement.

3. OBLIGATIONS OF THE HIRER

- 3.1. To enable the Employment Business to comply with its obligations under the Conduct Regulations the Hirer undertakes to provide to the Employment Business details of the position which the Hirer seeks to fill, including the following:
 - 3.1.1. the type of work that the Intermediary would be required to do;
 - 3.1.2. the location and hours of work;
 - 3.1.3. the experience, training, qualifications and any authorisation which the Hirer considers necessary or which are required by law or any professional body for the Agency Worker to possess in order to work in the position;
 - 3.1.4. any risks to health or safety known to the Hirer and what steps the Hirer has taken to prevent or control such risks;
 - 3.1.5. the date the Hirer requires the Intermediary to commence the Assignment;
 - 3.1.6. the duration or likely duration of the Assignment.
- 3.2. The Hirer 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.
- 3.3. To enable the Employment Business to comply with its obligations under the AWR, the Hirer undertakes 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:
 - 3.3.1. to inform the Employment Business 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 Hirer 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;
 - 3.3.2. if, since 1 October 2011, the Agency Worker has worked in the same or a similar role with the Hirer 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 Hirer via any third party during the relevant Assignment, to 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;
- 3.3.3. to inform the Employment Business 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:
- 3.3.3.1. completed two or more assignments with the Hirer;
- 3.3.3.2. completed at least one assignment with the Hirer and one or more earlier assignments with any member of the Hirer's Group; and/or
- 3.3.3.3. 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;
- 3.3.4. save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to:
- 3.3.4.1. provide the Employment Business 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 Hirer 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;
- 3.3.4.2. inform the Employment Business 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;
- 3.3.4.3. if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide the Employment Business with a written explanation of the basis on which the Hirer considers that the relevant individual is a Comparable Employee; and
- 3.3.4.4. inform the Employment Business in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced; and
- 3.3.5. save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to provide the Employment Business with written details of its pay and benefits structures and appraisal processes and any variations of the same.
- 3.4. In addition, for the purpose of awarding any bonus to which the Agency Worker may be entitled under the AWR, the Hirer will:
- 3.4.1. integrate the Agency Worker into its relevant performance appraisal system;
- 3.4.2. assess the Agency Worker's performance;
- 3.4.3. provide the Employment Business 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
- 3.4.4. provide the Employment Business with all other assistance the Employment Business may request in connection with the assessment of the Agency Worker's performance for the purpose of awarding any bonus.
- 3.5. The Hirer will comply with all the Employment Business' requests for information and any other requirements to enable the Employment Business to comply with the AWR.
- 3.6. The Hirer warrants that:
- 3.6.1. all information and documentation supplied to the Employment Business in accordance with clauses 3.2 to 3.5 inclusive is complete, accurate and up-to-date; and
- 3.6.2. it will, during the term of the relevant Assignment, immediately inform the Employment Business in writing of any subsequent change in any information or documentation provided in accordance with clauses 3.2 to 3.5 inclusive
- 3.7. Without prejudice to clauses 14.6 and 14.7, the Hirer shall inform the Employment Business in writing of any:
- 3.7.1. oral or written complaint the Agency Worker makes to the Hirer which is or may be a complaint connected with rights under the AWR; and
- 3.7.2. written request for information relating to the Relevant Terms and Conditions that the Hirer receives from the Agency Worker as soon as possible but no later than 7 calendar days from the day on which any such oral complaint is made to or written complaint or request is received by the Hirer and the Hirer will take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business, 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 Hirer's receipt of such a request in accordance with Regulation 16 of the AWR and the Hirer will provide the Employment Business with a copy of any such written statement.
- 3.8. The Hirer undertakes that it knows of no reason why it would be detrimental to the interests of the Intermediary for the Intermediary to fill the Assignment.
- 4. INFORMATION TO BE PROVIDED BY THE EMPLOYMENT BUSINESS TO THE HIRER**
- 4.1. When introducing an Intermediary to the Hirer the Employment Business shall inform the Hirer:
- 4.1.1. of the identity of the Intermediary and that of the Agency Worker supplied by the Intermediary to carry out the Assignment;
- 4.1.2. 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;
- 4.1.3. that the Agency Worker is willing to work in the Assignment;
- 4.1.4. details of the Intermediary Services to be provided; and
- 4.1.5. the Charges.
- 4.2. 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 business day (excluding Saturday, Sunday and any Public or Bank Holiday) following, save where the Intermediary is introduced for an Assignment in the same position as one in which the Agency Worker had previously been supplied within the previous 5 business days and such information has already been given to the Hirer, unless the Hirer requests that the information be resubmitted.
- 5. TIMESHEETS**
- 5.1. 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 Hirer shall sign the Employment Business' timesheet verifying the number of hours worked by the Agency Worker during that week.
- 5.2. Signature of the timesheet by the Hirer is confirmation of the number of hours worked by the agency worker. If the Hirer is unable to sign a timesheet produced for authentication by the Intermediary because the Hirer disputes the hours claimed, the Hirer shall inform the Employment Business as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what hours, if any, were worked by the Agency Worker. **Failure to sign the timesheet does not absolve the Hirer of its obligation to pay the Charges in respect of the hours worked.**
- 5.3. The Hirer shall not be entitled to decline to sign a timesheet on the basis that it is dissatisfied with the work performed by the Intermediary. In the event that the Hirer is dissatisfied with the work performed by the Intermediary the provisions of clause 10.1 and 11 below shall apply.
- 6. CHARGES**
- 6.1. The Hirer agrees to pay the Charges
- 6.2. The Employment Business reserves the right to vary the Charges agreed with the Hirer, by giving written notice to the Hirer:
- 6.1.1. in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the AWR, ITEPA or the NICS Legislation; and/or
- 6.1.2. if there is any variation in the Relevant Terms and Conditions.
- 6.3. The Charges are invoiced to the Hirer on a weekly basis and are payable within 14 days as Standard, or as detailed on Schedule 3(Letter of Assignment).
- 6.4. In addition to the Charges, the Hirer will pay the Employment Business an amount equal to any bonus that the Hirer awards to the Agency Worker in accordance with clause 3.4 immediately following any such award and the Employment Business will pay any such bonus to the Intermediary for onward payment to the Agency Worker. For the avoidance of doubt, the Hirer will also pay any employer's National Insurance Contributions and the Employment Business' commission in addition to any bonus pay to the Agency Worker.
- 6.5. VAT is payable at the applicable rate on the entirety of the Charges and all sums payable under clause 6.4.
- 6.6. The Employment Business reserves the right to charge interest on invoiced amounts unpaid by the due date at the rate of 4% per annum above the base rate from time to time of the National Westminster Bank from the due date until the date of payment.
- 6.7. There are no refunds payable in respect of the Charges
- 6.8. The Hirer's obligations under this clause 6 shall be performed without any right of the Hirer to invoke set-off, deductions, withholdings or other similar rights.
- 7. PAYMENT OF THE AGENCY WORKER**
- The Employment Business is responsible for paying the Intermediary.
- 8. TRANSFER FEES**
- 8.1. The Hirer shall be liable to pay a Transfer Fee if the Hirer Engages the Intermediary or any Agency Worker Introduced by the Employment Business other than via the Employment Business, or introduces the Intermediary or any Agency Worker to a third party and such introduction results in an Engagement of the Intermediary or any Agency Worker by the third party other than via the Employment Business and:
- 8.1.1. where the Intermediary or Agency Worker has been supplied by the Employment Business, such Engagement takes place during the Assignment or within the Relevant Period; or
- 8.1.2. where the Intermediary or Agency Worker has not been supplied, such Engagement takes place within 6 months from the date of the Introduction to the Hirer. The Transfer Fee will be calculated as follows: 15% of the Remuneration payable to the Intermediary or Agency Worker (as appropriate) during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the Charges multiplied by 250.
- 8.2. If the Hirer wishes to Engage the Intermediary other than via the Employment Business, without liability to pay a Transfer Fee the Hirer may, on giving 30 days written notice to the Employment Business, engage the Intermediary for the Period of Extended Hire. The Period of Extended Hire, before the Hirer Engages an Intermediary or Agency Worker (as appropriate) shall be 12 weeks.

- 8.3. During such Period of Extended Hire the Employment Business shall supply the Intermediary on the same terms on which it 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 Employment Business received the notice in clause 8.2; and the Hirer shall continue to pay the Charges set out in clause 6. If the Employment Business is unable to supply the Intermediary for any reason outside its control for the whole or any part of the Period of Extended Hire; or the Hirer does not wish to hire the Intermediary on the same terms as the Assignment; but the Intermediary or the Agency Worker is Engaged by the Hirer, the Hirer shall pay the Transfer Fee, reduced pro rata to reflect any Charges paid by the Hirer during any part of the Period of Extended Hire worked by the Intermediary before being Engaged by the Hirer. If the Hirer fails to give notice of its intention to Engage the Intermediary other than via the Employment Business before the Engagement takes place, the parties agree that the Transfer Fee shall be due in full.
- 8.4. Where prior to the commencement of the Hirer's Engagement other than via the Employment Business the Employment Business and the Hirer agree that such Engagement will be on the basis of a fixed term of less than 12 months, the Employment Business may, in its absolute discretion, reduce the Transfer Fee as calculated in accordance with Schedule 1 pro-rata. Such reduction is subject to the Hirer Engaging the Intermediary for the agreed fixed term. Should the Hirer extend the Intermediary's Engagement or re-Engage the Intermediary within 12 months from the commencement of the initial Engagement the Employment Business reserves the right to recover the balance of the Transfer Fee.
- 8.5. No refund of the Transfer Fee will be paid in the event that the Engagement of the Intermediary other than via the Employment Business by the Hirer or by a third party to which the Hirer introduces the Intermediary or any Agency Worker, subsequently terminates or terminates before the end of the fixed term referred to in clause 8.4.
- 8.6. VAT is payable at the applicable rate in addition to any Transfer Fee due.
- 9. SUITABILITY CHECKS AND INFORMATION TO BE PROVIDED IN SPECIAL SITUATIONS**
- 9.1. Where:
- 9.1.1. the Intermediary or the Agency Worker is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment the Employment Business will take all reasonably practicable steps to obtain and offer to provide to the Hirer copies of any relevant qualifications or authorisations of the Agency Worker; and
- 9.1.2. in addition, where the Assignment involves working with, caring for or attending one or more Vulnerable Persons, the Employment Business will take all reasonably practicable steps to obtain and offer to provide copies to the Hirer of two references from persons who are not relatives of the Agency Worker and who have agreed that the references they provide may be disclosed to the Hirer; and such other reasonably practicable steps as are required to confirm that the Intermediary or the Agency Worker supplied to do the work is suitable for the Assignment. If the Employment Business has taken all reasonably practicable steps to obtain the information above and has been unable to do so fully it shall inform the Hirer of the steps it has taken to obtain this information in any event.
- 9.2. The Hirer shall advise the Employment Business at the time of instructing the Employment Business to supply an Intermediary, whether during the course of the Assignment, the Intermediary or the Agency Worker will be required to work with, care for or attend one or more Vulnerable Persons or engage in activity or otherwise be working in a position covered by the Safeguarding Vulnerable Groups Act 2006.
- 9.3. The Hirer shall assist the Employment Business by providing any information required to allow the Employment Business to comply with its statutory obligations under the Safeguarding Vulnerable Groups Act 2006, and to allow the Employment Business to select a suitable Intermediary for the Assignment.
- 9.4. In particular in the event that the Hirer removes an Intermediary from an Assignment in circumstances which would require the Employment Business to provide information to the Disclosure and Barring Service (or equivalent authority) under the Safeguarding Vulnerable Groups Act 2006, the Hirer will provide sufficient information to the Employment Business to allow it to discharge its statutory obligations.
- 10. UNSUITABILITY OF THE INTERMEDIARY**
- 10.1. The Hirer undertakes to supervise the Intermediary sufficiently to ensure the Hirer's satisfaction with the Intermediary standards of work. If the Hirer reasonably considers that the Intermediary Services unsatisfactory, the Hirer may terminate the Assignment either by instructing the Intermediary leave the Assignment immediately, or by directing the Employment Business to remove the Intermediary. The Employment Business may, in its absolute discretion, in such circumstances, reduce or cancel the Charges for the time worked by that Intermediary, provided that the Hirer has notified the Employment Business immediately that they have asked the Intermediary to leave the Assignment or the Assignment terminates:
- 10.1.1. within 4 hours of the Agency Worker commencing the Assignment where the Assignment is for more than 7 hours; or
- 10.1.2. within 2 hours for Assignments of 7 hours or less;
- and provided that notification of the unsuitability of the Intermediary is confirmed in writing to the Employment Business within 48 hours of the termination of the Assignment.
- 10.2. The Employment Business shall notify the Hirer immediately if it receives or otherwise obtains information which gives the Employment Business reasonable grounds to believe that any Intermediary supplied to the Hirer is unsuitable for the Assignment and shall be entitled to terminate the Assignment forthwith without prior notice and without liability. Notwithstanding, the Hirer shall remain liable for all such Charges incurred prior to the termination of the Assignment.
- 10.3. The Hirer shall notify the Employment Business immediately and without delay and in any event within 24 hours if the Intermediary or the Agency Worker fails to provide the Intermediary Services or has notified the Hirer that they are unable to provide the Intermediary Services for any reason.
- 11. TERMINATION OF THE ASSIGNMENT**
- 11.1. Either party may terminate the Assignment by giving to the other party in writing the period of notice specified in the Assignment Details Form.
- 11.2. Notwithstanding the provisions of clause 11.1 the Hirer may terminate the Assignment with immediate effect by notice in writing to the Employment Business where:
- 11.2.1. the Intermediary has acted in breach of any statutory or other reasonable rules and regulations applicable to them while providing the Intermediary Services; or
- 11.2.2. the Intermediary is in wilful or persistent breach of its obligations; or
- 11.2.3. the Hirer reasonably believes that the Intermediary has not observed any condition of confidentiality applicable to the Intermediary from time to time; or
- 11.2.4. the Hirer reasonably considers that the Intermediary's provision of the Intermediary Services is unsatisfactory.
- 11.3. The Employment Business may terminate an Assignment with immediate effect by notice in writing if:
- 11.3.1. the Hirer is in wilful or persistent breach of its obligations under this Agreement and where the breach is capable of being remedied, fails to remedy the breach within 7 days of receiving written notice from the Employment Business to do so; or
- 11.3.2. the Hirer fails to pay any amount which is due to the Employment Business in full and on the date that the payment falls due; or
- 11.3.3. the Hirer 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
- 11.3.4. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Hirer; or
- 11.3.5. an order is made for the winding up of the Hirer, or where the Hirer 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
- 11.3.6. (where the Hirer is an individual) the Hirer 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.
- 12. CONFIDENTIALITY AND DATA PROTECTION**
- 12.1. All information relating to an Intermediary and the Agency Worker is confidential and where that information relates to an individual is also subject to the Data Protection Laws and is provided solely for the purpose of providing Intermediary services to the Hirer. Such information must not be used for any other purpose nor divulged to any third party and the Hirer undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times.
- 12.2. The Employment Business undertakes to keep confidential all Relevant Terms and Conditions that the Hirer discloses to the Employment Business and not to use such information except for the purposes of compliance with the AWR (including, for the avoidance of doubt and without limitation, when dealing with any request for information or complaint made by any Agency Worker or any AWR Claim).
- 12.3. Information relating to the Employment Business' business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.
- 13. INTELLECTUAL PROPERTY RIGHTS**
- All copyright, trademarks, patents and other intellectual property rights deriving from the provision of the Intermediary Services by the Intermediary for the Hirer during the Assignments shall belong to the Hirer, save such rights as may be expressly owned or retained by the Intermediary and set out in the Assignment Details Form. Accordingly the Employment Business shall use its reasonable endeavours to ensure that the Intermediary shall (and any relevant member of the Agency Worker shall) execute all such documents and do all such acts in order to give effect to the Hirer's rights pursuant to this clause.
- 14. LIABILITY**
- 14.1. Whilst reasonable efforts are made by the Employment Business to give satisfaction to the Hirer by ensuring reasonable standards of skill, integrity and reliability from the Intermediary and to provide the same in accordance with the Assignment details as provided by the Hirer no liability is accepted by the Employment Business for any losses arising from the failure to provide an Intermediary for all or part of a period of the Assignment or from negligence, dishonest, misconduct or lack of skill of the Intermediary or the Agency Worker or if the Intermediary terminates the Assignment for any reason. For the avoidance of doubt, the Employment Business 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.
- 14.2. The Intermediary supplied by the Employment Business to the Hirer is engaged on a contract for services and the Agency Worker supplied by the Intermediary is deemed to be under the supervision, direction and control of the Hirer for the duration of the Assignment.
- 14.3. The Hirer shall advise the Employment Business of any special health and safety matters about which the Employment Business 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. The Hirer will comply in all respects with all relevant statutes, by-laws, codes of practice and legal requirements including the provision of adequate public liability insurance in respect of the Intermediary.

- 14.4. The Hirer undertakes not to request the supply of an Intermediary to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by a worker who has been transferred by the Hirer to perform the duties of a person on strike or taking official industrial action
- 14.5. The Hirer shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business 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 (and/or any supporting or consequential secondary legislation relating thereto) or the NICs legislation arising out of any Assignment or arising out of any non-compliance with, and/ or as a result of any breach of, this Agreement by the Hirer.
- 14.6. The Hirer shall inform the Employment Business in writing of any AWR Claim which comes to the notice of the Hirer as soon possible but no later than 7 calendar days from the day on which any such AWR Claim comes to the notice of the Hirer.
- 14.7. If the Agency Worker brings, or threatens to bring, any AWR Claim, the Hirer undertakes to take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business and at the Hirer's own cost, to avoid, dispute, resist, mitigate, compromise or defend any such AWR Claim and to appeal against any judgment given in respect thereof.
- 15. NOTICES**
All notices which are required to be given in accordance with these Terms 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.
- 16. SEVERABILITY**
If any of the provisions of this Agreement be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the remaining provisions, which shall continue to be valid to the fullest extent permitted by applicable laws.
- 17. RIGHTS OF THIRD PARTIES**
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.
- 18. GOVERNING LAW AND JURISDICTION**
These Terms are governed by the law of England & Wales and are subject to the exclusive jurisdiction of the Courts of England & Wales.

APPENDIX IV

TERMS OF BUSINESS WITH HIRER FOR THE SUPPLY OF A LIMITED COMPANY CONTRACTOR WHO HAS OPTED OUT OF THE CONDUCT REGULATIONS (WITHIN IR35)

THE PARTIES

- (1) HEADS Recruitment Limited (registered company no. 03443013) of Kimada House 442 Flixton Rd, Flixton, Manchester, M41 6EY ("the Employment Business").
- (2) "The Hirer" as detailed in the Assignment Details Form, to whom the Intermediary is introduced. For the avoidance of doubt the Hirer shall also include any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Intermediary is introduced.

RECITALS

- (A) The Employment Business carries on the business of sourcing and supplying independent contractors to provide services to clients of the Employment Business. The Hirer has instructed the Employment Business to supply an Intermediary to provide certain services ("the Intermediary Services") as specified in the relevant Assignment Details Form.
- (B) The Employment Business will introduce an Intermediary to the Hirer to provide the Intermediary Services on the terms and subject to the conditions of this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Terms the following definitions apply: "Agency Worker" means the individual who is introduced by the Employment Business to provide services to the Hirer; "AWR" means the Agency Workers Regulations 2010; "Assignment" means assignment services to be performed by the Agency Worker for the Hirer for a period of time during which the Agency Worker is supplied by the Employment Business to work temporarily for and under the supervision and direction of the Hirer; "Assignment Details Form" means written confirmation of the assignment details agreed with the Hirer prior to commencement of the Assignment; "AWR Claim" means any complaint or claim to a tribunal or court made by or on behalf of the Agency Worker against the Hirer and/or the Employment Business for any breach of the AWR; "Calendar Week" means any period of seven days starting with the same day as the first day of the First Assignment; "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, any applicable statutory or regulatory provisions and all European Directives and regulations in force from time to time relating to the protection and transfer of personal data; "Engagement" means the engagement, employment or use of the Agency Worker by the Hirer or any third party to whom the Agency Worker has been introduced by the Hirer, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, and/or through a company of which the Agency Worker is an officer, employee or other representative, 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'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" means the person, firm or corporate body introduced to the Hirer by the Employment Business to carry out an Assignment (and, save where otherwise indicated, includes the Agency Worker); "Introduction" means (i) the passing to the Hirer of a curriculum vitae or information which identifies the Agency Worker; or (ii) the Hirer's interview of the Agency Worker (in person or by telephone or by any other means), following the Hirer's instruction to the Employment Business to supply a temporary worker; or (iii) the supply of the Agency Worker; and, in any case, which leads to an Engagement of the temporary worker or the Agency Worker; and "Introduced" and "Introducing" shall be construed accordingly; "Introduction Fee" means the fee payable by the Hirer in accordance with clause 8; "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; "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 Schedule 2 to these Terms; "Relevant Terms and Conditions" means for the purposes of the AWR 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 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, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Agency Worker for services provided to or on behalf of the Hirer or any third party. Where a company car is provided, a notional amount of £3000 will be added to the salary in order to calculate the Employment Business' fee; "Temporary Work Agency" means as defined in Schedule 2 to this Agreement.
- 1.2 Unless the context otherwise requires, 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 Schedules and any applicable Assignment Details Form constitutes the contract ("the Agreement") between the Employment Business and the Hirer for the supply of the Intermediary Services by the Employment Business to the Hirer, and is deemed to be accepted by the Hirer by virtue of its request for, interview with, or Engagement of an Intermediary or the passing of any information about the Agency Worker or Intermediary to any third party following an Introduction.
- 2.2 This Agreement contains the entire agreement between the Employment Business and the Hirer for the supply of the Intermediary Services to the Hirer, and unless otherwise agreed in writing by a director of the Employment Business, this Agreement shall prevail over any terms of business or purchase conditions (or similar) put forward by the Hirer.
- 2.3 Subject to clause 6.2 no variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between a director of the Employment Business and the Hirer and are set out in writing.
- 2.4 The Hirer 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 this Agreement.

3. HIRER OBLIGATIONS

- 3.1 The Hirer 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.
- 3.2 To enable the Employment Business to comply with its obligations under the AWR, the Hirer undertakes 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:
- 3.2.1 to inform the Employment Business 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 Hirer 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;
- 3.2.2 if, since 1 October 2011 the Agency Worker has worked in the same or a similar role with the Hirer 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 Hirer via any third party during the relevant Assignment, to 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;
- 3.2.3 to inform the Employment Business 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:
- 3.2.3.1 completed 2 or more assignments with the Hirer;
- 3.2.3.2 completed at least 1 assignment with the Hirer and 1 or more earlier assignments with any member of the Hirer's Group; and/or
- 3.2.3.3 worked in more than 2 roles during an assignment with the Hirer and on at least 2 occasions worked in a role that was not the same role as the previous role;
- 3.2.4 save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to:

- 3.2.4.1. provide the Employment Business 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 Hirer 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;
- 3.2.4.2. inform the Employment Business 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;
- 3.2.4.3. if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide the Employment Business with a written explanation of the basis on which the Hirer considers that the relevant individual is a Comparable Employee; and
- 3.2.4.4. inform the Employment Business in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced; and
- 3.2.5. save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to provide the Employment Business with written details of its pay and benefits structures and appraisal processes and any variations of the same.
- 3.3. In addition, for the purpose of awarding any bonus to which the Agency Worker may be entitled under the AWR, the Hirer will:
- 3.3.1. integrate the Agency Worker into its relevant performance appraisal system;
- 3.3.2. assess the Agency Worker's performance;
- 3.3.3. provide the Employment Business 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
- 3.3.4. provide the Employment Business with all other assistance the Employment Business may request in connection with the assessment of the Agency Worker's performance for the purpose of awarding any bonus.
- 3.4. The Hirer will comply with all the Employment Business's requests for information and any other requirements to enable the Employment Business to comply with the AWR.
- 3.5. The Hirer warrants that:
- 3.5.1. all information and documentation supplied to the Employment Business in accordance with clauses 3.1 to 3.4 inclusive is complete, accurate and up-to-date; and
- 3.5.2. it will, during the term of the relevant Assignment, immediately inform the Employment Business in writing of any subsequent change in any information or documentation provided in accordance with clauses 3.1 to 3.4 inclusive.
- 3.6. Without prejudice to clauses 12.5 and 12.6, the Hirer shall inform the Employment Business in writing of any:
- 3.6.1. oral or written complaint the Agency Worker makes to the Hirer which is or may be a complaint connected with rights under the AWR; and
- 3.6.2. written request for information relating to the Relevant Terms and Conditions that the Hirer receives from the Agency Worker as soon as possible but no later than 7 calendar days from the day on which any such oral complaint is made to or written complaint or request is received by the Hirer and the Hirer undertakes to take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business, 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 Hirer's receipt of such a request in accordance with Regulation 16 of the AWR and the Hirer will provide the Employment Business with a copy of any such written statement.
- 4. INFORMATION TO BE PROVIDED BY THE EMPLOYMENT BUSINESS TO THE HIRER**
Prior to the commencement of the Assignment, or if this is not practical, upon commencement of the Assignment, the Employment Business will send to the Hirer the information set out in the Assignment Details Form.
- 5. TIMESHEETS**
- 5.1. At the end of each week of the Assignment (or at the end of the Assignment where the Assignment is for a period of less than 1 week) the Hirer shall sign the Employment Business's timesheet verifying the number of hours worked by the Agency Worker during that week.
- 5.2. Signature of the timesheet by the Hirer is confirmation of the number of hours worked by the Agency Worker. If the Hirer is unable to sign a timesheet produced for authentication by the Intermediary because the Hirer disputes the hours claimed, the Hirer shall inform the Employment Business as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what hours, if any, were worked by the Agency Worker. Failure to sign the timesheet does not absolve the Hirer of its obligation to pay the Charges in respect of the hours worked.
- 5.3. The Hirer shall not be entitled to decline to sign a timesheet on the basis that it is dissatisfied with the work performed by the Agency Worker. In the event that the Hirer is dissatisfied with the work performed by the Agency Worker the provisions of clause 9 shall apply.
- 6. CHARGES**
- 6.1. The Hirer agrees to pay the Charges.
- 6.2. The Employment Business reserves the right to vary the Charges agreed with the Hirer, by giving written notice to the Hirer:
- 6.2.1 in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the AWR, ITEPA or the NICS Legislation; and/or
- 6.2.2 if there is any variation in the Relevant Terms and Conditions.
- 6.3. The Charges are invoiced to the Client on a weekly basis and are and are payable within 14 days as Standard, or as detailed on Schedule 3(Letter of Assignment).
- 6.4. In addition to the Charges, the Hirer will pay the Employment Business an amount equal to any bonus that the Hirer awards to the Agency Worker in accordance with clause 3.2.5 immediately following any such award and the Employment Business will pay any such bonus to the Intermediary for onward payment to the Agency Worker. For the avoidance of doubt, the Hirer will also pay any employers' National Insurance contributions and the Employment Business' commission in addition to any bonus payable to the Agency Worker.
- 6.5. VAT is payable at the applicable rate on the entirety of the Charges and all sums payable under clause 6.5.
- 6.6. The Employment Business reserves the right to charge interest on invoiced amounts unpaid by the due date at the rate of 4% per annum above the base rate from time to time of the National Westminster Bank from the due date until the date of payment.
- 6.7. The Hirer's obligations under this clause 6 shall be performed without any right of the Hirer to invoke set-off, deductions, withholdings or other similar rights.
- 7. PAYMENT OF THE INTERMEDIARY**
The Employment Business is responsible for paying the Intermediary.
- 8. INTRODUCTION FEES**
- 8.1. The Hirer shall be liable to pay the Employment Business an Introduction Fee where the Employment Business Introduces the Intermediary to the Hirer and:
- 8.1.1. the Hirer Engages the Intermediary or any Agency Worker other than through the Employment Business, within a period of 6 months from the termination of the Assignment in respect of which the Intermediary or Agency Worker was supplied, or if there was no supply, within 6months of the Introduction of the Intermediary or any Agency Worker by the Employment Business to the Hirer; or
- 8.1.2. the Hirer introduces the Intermediary or any Agency Worker to a third party and such introduction results in an Engagement of the Intermediary or any Agency Worker by the third party other than through the Employment Business either during the Assignment or within 6months from the termination of the Assignment.
- 8.2. The Introduction Fee will be calculated at 15% of the Remuneration payable to the Intermediary. Where the amount of the Remuneration payable to the Intermediary is not known, the Introduction Fee will be calculated by multiplying the hourly Charges by 250.
- 8.3. No refund of the Introduction Fee will be paid in the event that the Engagement subsequently terminates.
- 8.4. VAT is payable in addition to any Introduction Fee due.
- 9. TERMINATION OF THE ASSIGNMENT**
- 9.1. Either party may terminate the Assignment by giving to the other party in writing the period of notice specified in the Assignment Details Form.
- 9.2. Notwithstanding the provisions of clause 9.1 the Hirer may terminate the Assignment with immediate effect by notice in writing to the Employment Business where:
- 9.2.1. the Intermediary has acted in breach of any statutory or other reasonable rules and regulations applicable to it while providing the Intermediary Services; or
- 9.2.2. the Intermediary is in wilful or persistent breach of its obligations; or
- 9.2.3. the Hirer reasonably believes that the Intermediary has not observed any condition of confidentiality applicable to the Intermediary from time to time; or
- 9.2.4. the Hirer reasonably considers that the Intermediary's provision of the Intermediary Services is unsatisfactory.
- 9.3. The Employment Business may terminate an Assignment with immediate effect by notice in writing if:
- 9.3.1. the Hirer is in wilful or persistent breach of its obligations under this Agreement and where the breach is capable of being remedied, fails to remedy the breach within 7 days of receiving written notice from the Employment Business to do so; or

- 9.3.2. the Hirer fails to pay any amount which is due to the Employment Business in full and on the date that the payment falls due; or
- 9.3.3. the Hirer 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
- 9.3.4. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Hirer; or
- 9.3.5. an order is made for the winding up of the Hirer, or where the Hirer 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
- 9.3.6. (where the Hirer is an individual) the Hirer 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.

8. CONFIDENTIALITY AND DATA PROTECTION

- 8.1. All information relating to an Agency Worker is confidential and subject to the Data Protection Laws and is provided solely for the purpose of providing work-finding services to the Hirer. Such information must not be used for any other purpose nor divulged to any third party and the Hirer undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times.
- 8.2. The Employment Business undertakes to keep confidential all Relevant Terms and Conditions that the Hirer discloses to the Employment Business and not to use such information except for the purposes of compliance with the AWR (including, for the avoidance of doubt and without limitation, when dealing with any request for information or complaint made by any Agency Worker or any AWR Claim).
- 8.3. Information relating to the Employment Business' business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.

9. INTELLECTUAL PROPERTY RIGHTS

All copyright, trademarks, patents and other intellectual property rights deriving from the provision of the Intermediary Services by the Intermediary for the Hirer during the Assignment shall belong to the Hirer, save such rights as may be expressly owned or retained by the Intermediary and set out in the Assignment Details Form. Accordingly the Employment Business shall use its reasonable endeavours to ensure that the Intermediary shall (and any relevant Agency Worker shall) execute all such documents and do all such acts in order to give effect to the Hirer's rights pursuant to this clause.

10. LIABILITY

- 12.1. Whilst reasonable efforts are made by the Employment Business to give satisfaction to the Hirer by ensuring reasonable standards of skills, integrity and reliability from the Intermediary and to provide the same in accordance with the Assignment details as provided by the Hirer, no liability is accepted by the Employment Business for any Losses arising from the failure to provide an Intermediary for all or part of the period 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. For the avoidance of doubt, the Employment Business 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.
- 12.2. Intermediaries and Agency Workers supplied by the Employment Business to the Hirer are deemed to be under the supervision, direction and control of the Hirer for the duration of the Assignment.
- 12.3. The Hirer shall advise the Employment Business of any special health and safety matters about which the Employment Business 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. The Hirer will comply in all respects with all relevant statutes, by-laws, codes of practice and legal requirements including the provision of adequate public liability insurance in respect of the Intermediary.
- 12.4. The Hirer shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business 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 (and/or any supporting or consequential secondary legislation relating thereto) or the NICs Legislation arising out of any Assignment or arising out of any non-compliance with, and/or as a result of, any breach of this Agreement by the Hirer.
- 12.5. The Hirer shall inform the Employment Business in writing of any AWR Claim which comes to the notice of the Hirer 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 Hirer.
- 12.6. If the Agency Worker brings, or threatens to bring, any AWR Claim, the Hirer undertakes to take such action and to give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business and at the Hirer's own cost, to avoid, dispute, resist, mitigate, compromise or defend any such AWR Claim and to appeal against any judgment given in respect thereof.

11. NOTICES

All notices which are required to be given in accordance with these Terms 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.

12. 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.

13. RIGHTS OF THIRD PARTIES

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.

14. LAW AND JURISDICTION

These Terms are governed by the law of England and are subject to the exclusive jurisdiction of the Courts of England & Wales.

APPENDIX V

TERMS OF BUSINESS WITH A HIRER FOR THE SUPPLY OF AGENCY WORKERS (DRIVING STAFF)

1. DEFINITIONS AND INTERPRETATION

- 1.1. In these Terms the following definitions apply: **"AETR"** means the European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport of 1st July 1970; **"Agency Worker"** means the individual who is introduced by the Employment Business to provide services to the Hirer; **"AWR"** means the Agency Workers Regulations 2010; **"Assignment"** means assignment services to be performed by the Agency Worker for the Hirer for a period of time during which the Agency Worker is supplied by the Employment Business to work temporarily for and under the supervision and direction of the Hirer; **"Assignment Details Form"** means written confirmation of the assignment details agreed with the Hirer prior to commencement of the Assignment; **"AWR Claim"** means any complaint or claim to a tribunal or court made by or on behalf of the Agency Worker against the Hirer and/or the Employment Business for any breach of the AWR; **"Calendar Week"** means any period of seven days starting with the same day as the first day of the First Assignment; **"Charges"** means the hourly charges of the Employment Business calculated in accordance with clause 6.1 and as may be varied from time to time in accordance with these Terms; **"Comparable Employee"** means as defined in Schedule 2 to these Terms; **"Conduct Regulations"** means the Conduct of Employment Agencies and Employment Businesses Regulations 2003; **"Confidential Information"** means 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 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 Hirer or the Employment Business or by a third party on behalf of the Hirer 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; **"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, any applicable statutory or regulatory provisions and all European Directives and regulations in force from time to time relating to the protection and transfer of personal data; **"Driving Legislation"** means the Transport Act 1968, the AETR, the Road Transport (Working Time) Regulations and the EU Drivers' Hours Regulation; **"Employment Business"** means HEADS Recruitment Limited; Kimada House, 442 Flixton Road, Flixton, MANCHESTER M41 6EY; **"Engagement"** means the engagement (including the Agency Worker's acceptance of the Hirer's offer), employment or use of the Agency Worker by the Hirer or by any third party to whom the Agency Worker has been introduced by the Hirer, on a permanent or temporary basis, whether under a contract of service or for services; under an agency, licence, franchise or partnership agreement; or any other engagement; or through a limited company of which the Agency Worker is an officer, employee or other representative; and "Engage", "Engages" and "Engaged" shall be construed accordingly; **"EU Drivers' Hours Regulation"** means Regulation (EC) No. 561/2006 of the European Parliament and of the Council of 15 March 2006; **"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); **"Goods Vehicles (Licensing of Operators) Act"** means the Goods Vehicles (Licensing of Operators) Act 1995; **"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 Agency Worker is introduced; **"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; **"Introduction"** means (i) the passing to the Hirer of a curriculum vitae or information which identifies the Agency Worker; or (ii) the Hirer's interview of the Agency Worker (in person or by telephone or by any other means), following the Hirer's instruction to the Employment Business to supply a temporary worker; or (iii) the supply of the Agency Worker; and, in any case, which leads to an Engagement of the temporary worker or the Agency Worker; and "Introduced" and "Introducing" shall be construed accordingly; **"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; **"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; **"Period of Extended Hire"** means any additional period that the Hirer wishes the Agency Worker to be supplied for beyond the duration of the original Assignment or series of Assignments as an alternative to paying a Transfer Fee; **"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 Schedule 2 to these Terms; **"Relevant Period"** means the later of (a) the period of 8 weeks commencing on the day after the last day on which the Agency Worker worked for the Hirer having been supplied by the Employment Business; or (b) the period of 14 weeks commencing on the first day on which the Agency Worker worked for the Hirer having been supplied by the Employment Business or 14 weeks from the first day of the most recent Assignment where there has been a break of more than 6 weeks (42 days) since any previous assignment; **"Relevant Terms and Conditions"** means for the purposes of the AWR 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 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, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Agency Worker for services provided to or on behalf of the Hirer or any third party. Where a company car is provided, a notional amount of £3000 will be added to the salary in order to calculate the Employment Business' fee; **"Road Transport (Working Time) Regulations"** means the Road Transport (Working Time) Regulations 2005; **"Temporary Work Agency"** means as defined in Schedule 2 to these Terms; **"Terms"** means these terms of business (including the attached schedules) together with any applicable Assignment Details Form; **"Transfer Fee"** means the fee payable in accordance with clause 8 of these Terms and Regulation 10 of the Conduct Regulations; **"Vehicle"** means a "goods vehicle" as defined under the Road Transport (Working Time) Regulations; **"Worker Status"** refers to the employment status of the Agency Worker introduced by the Employment Business to the hirer, whether they be PAYE, Ltd Company or pay rolled via a third party; **"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 (as defined under the Road Transport (Working Time) Regulations), at the disposal of the Hirer and/or the Employment Business and/or a Temporary Work Agency and exercising his/her functions or activities, being: (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, immigration 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); and **"WTR"** means the Working Time Regulations 1998.
- 1.2. Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.
- 1.3. The headings contained in these Terms 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 these Terms) and all subordinate legislation made (before or after these Terms) under it from time to time.

2. THE CONTRACT

- 2.1. These Terms constitute the contract between the Employment Business and the Hirer for the supply of the Agency Worker's services by the Employment Business to the Hirer, irrespective of Worker Status, and are deemed to be accepted by the Hirer by virtue of its request for, interview with or Engagement of the Agency Worker, or the passing of any information by the Hirer about an Agency Worker to any third party following an Introduction.
- 2.2. These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by a *director* of the Employment Business, these Terms prevail over any terms of business or purchase conditions (or similar) put forward by the Hirer.
- 2.3. Subject to clause 6.3, no variation or alteration to these Terms shall be valid unless the details of such variation are agreed between a *director* of the Employment Business and the Hirer and are set out in writing and a copy of the varied Terms is given to the Hirer stating the date on or after which such varied Terms shall apply.
- 2.4. The Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973) when Introducing Agency Workers for Assignments with the Hirer.

3. HIRER OBLIGATIONS

- 3.1. To enable the Employment Business to comply with its obligations under the Conduct Regulations the Hirer undertakes to provide to the Employment Business details of the position which the Hirer seeks to fill, including the following:
- 3.1.1. the type of work that the Agency Worker would be required to do;
- 3.1.2. the location and hours of work;
- 3.1.3. the experience, training, qualifications and any authorisation which the Hirer considers necessary or which are required by law or any professional body for the Agency Worker to possess in order to work in the position;
- 3.1.4. any risks to health or safety known to the Hirer and what steps the Hirer has taken to prevent or control such risks;
- 3.1.5. the date the Hirer requires the Agency Worker to commence the Assignment;
- 3.1.6. the duration or likely duration of the Assignment.
- 3.2. The Hirer will assist the Employment Business in complying with the Employment Business' duties under such provisions of the Driving Legislation and the WTR 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 Employment Business, and the Hirer will not do anything to cause the Employment Business to be in breach of its obligations under such legislation. If the Hirer requires the services of an Agency Worker for more than 48 hours in any week during the course of an Assignment, the Hirer must notify the Employment Business of this requirement before the commencement of the Assignment or at the very latest, where this is not reasonably practicable, before the commencement of the week in which the Hirer requires the Agency Worker to work in excess of 48 hours.
- 3.3. 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 Hirer:
- 3.3.1. 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 Hirer hereby warrants that it holds such a licence;
- 3.3.2. will comply with all of its obligations for obtaining and maintaining such operator's licence under the Goods Vehicles (Licensing of Operators) Act; and
- 3.3.3. will upon request permit the Employment Business to inspect and take copies of the Hirer's operator's licence.
- 3.4. The Hirer will 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 and the WTR as may be applicable to the Assignment and any other similar regulations in any country or countries applicable to the Assignment.
- 3.5. The Hirer will comply with its obligations under Regulation 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.
- 3.6. To enable the Employment Business to comply with its obligations under the AWR, the Hirer undertakes 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' request:
- 3.6.1. to inform the Employment Business of any Calendar Weeks in which the relevant Agency Worker has worked in the same or a similar role with the Hirer 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;
- 3.6.2. if the Agency Worker has worked in the same or a similar role with the Hirer 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 Hirer via any third party during the relevant Assignment, to 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;
- 3.6.3. to inform the Employment Business if the Agency Worker has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment carried out work which could be deemed to count toward the Qualifying Period for the relevant Assignment in accordance with Regulation 9 of the AWR because s/he has:
- 3.6.3.1. completed two or more assignments with the Hirer;
- 3.6.3.2. completed at least one assignment with the Hirer and one or more earlier assignments with any member of the Hirer's Group; and/or
- 3.6.3.3. 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;
- 3.6.4. save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to:
- 3.6.4.1. provide the Employment Business 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 Hirer 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;
- 3.6.4.2. inform the Employment Business 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;
- 3.6.4.3. if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide the Employment Business with a written explanation of the basis on which the Hirer considers that the relevant individual is a Comparable Employee; and
- 3.6.4.4. inform the Employment Business in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced; and
- 3.6.5. save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to provide the Employment Business with written details of its pay and benefits structures and appraisal processes and any variations of the same.
- 3.7. In addition, for the purpose of awarding any bonus to which the Agency Worker may be entitled under the AWR, the Hirer will:
- 3.7.1. integrate the Agency Worker into its relevant performance appraisal system;
- 3.7.2. assess the Agency Worker's performance;
- 3.7.3. provide the Employment Business 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
- 3.7.4. provide the Employment Business with all other assistance the Employment Business may request in connection with the assessment of the Agency Worker's performance for the purpose of awarding any bonus.
- 3.8. The Hirer will comply with all the Employment Business' requests for information and any other requirements to enable the Employment Business to comply with the AWR.
- 3.9. The Hirer 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 Hirer agrees to allow the Employment Business to inspect and take copies of any relevant policies of insurance and any other relevant documentation.
- 3.10. The Hirer 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.
- 3.11. The Hirer warrants that:
- 3.11.1. all information and documentation supplied to the Employment Business in accordance with clauses 3.2, 3.3, 3.4, 3.7 and 3.8 is complete, accurate and up-to-date; and
- 3.11.2. it will, during the term of the relevant Assignment, immediately inform the Employment Business in writing of any subsequent change in any information or documentation provided in accordance with clauses 3.2, 3.3, 0, 3.7 and 3.8;
- 3.12. Without prejudice to clauses 14.7 and 14.8, the Hirer shall inform the Employment Business in writing of any:
- 3.12.1. oral or written complaint the Agency Worker makes to the Hirer which is or may be a complaint connected with rights under the AWR; and
- 3.12.2. written request for information relating to the Relevant Terms and Conditions that the Hirer receives from the Agency Worker as soon as possible but no later than 7 calendar days from the day on which any such oral complaint is made to or written complaint or request is received by the Hirer and the Hirer will take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business, 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 Hirer's receipt of such a request in accordance with Regulation 16 of the AWR and the Hirer will provide the Employment Business with a copy of any such written statement.

- 3.13. The Hirer 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.
- 4. INFORMATION TO BE PROVIDED BY THE EMPLOYMENT BUSINESS TO THE HIRER**
- 4.1. When Introducing an Agency Worker to the Hirer the Employment Business shall inform the Hirer:
- 4.1.1. of the identity of the Agency Worker;
- 4.1.2. 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;
- 4.1.3. that the Agency Worker is willing to work in the Assignment; and
- 4.1.4. the Charges.
- 4.2. 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 business day (excluding Saturday, Sunday and any Public or Bank Holiday) following, save where the Agency Worker is Introduced for an Assignment in the same position as one in which the Agency Worker had previously been supplied within the previous 5 business days and such information has already been given to the Hirer, unless the Hirer requests that the information be resubmitted.
- 4.3. In relation to any Vehicles and operations subject to the Goods Vehicles (Licensing of Operators) Act, to assist the Hirer to comply with the relevant provisions of the Goods Vehicle (Licensing of Operators) Act 1995, the Employment Business agrees to provide the Hirer upon reasonable written request with such information as is available to the Employment Business about any driving assignments carried out by the Agency Worker in the seven calendar days immediately preceding the commencement of an Assignment with the Hirer, provided that the Agency Worker shall have worked for a client or customer of the Employment Business during those seven calendar days.
- 5. TIMESHEETS**
- 5.1. 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 Hirer shall sign the Employment Business' timesheet verifying the number of hours worked by the Agency Worker during that week.
- 5.2. Signature of the timesheet by the Hirer is confirmation of the number of hours worked. If the Hirer is unable to sign a timesheet produced for authentication by the Agency Worker because the Hirer disputes the hours claimed, the Hirer shall inform the Employment Business as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what hours, if any, were worked by the Agency Worker. **Failure to sign the timesheet does not absolve the Hirer of its obligation to pay the Charges in respect of the hours worked.**
- 5.3. The Hirer shall not be entitled to decline to sign a timesheet on the basis that it is dissatisfied with the work performed by the Agency Worker. In the event that the Hirer is dissatisfied with the Agency Worker the provisions of clause 10.1 below shall apply.
- 6. CHARGES**
- 6.1. The Hirer agrees to pay the Charges as notified to and agreed with the Hirer. The Charges are calculated according to the number of hours worked by the Agency Worker (to the nearest quarter hour) and comprise the following:
- 6.1.1. the Agency Worker's hourly rate of pay;
- 6.1.2. an amount equal to any paid holiday leave to which the Agency Worker is entitled in connection with the WTR and, where applicable, the AWR and which is accrued during the course of an Assignment;
- 6.1.3. any other amounts to which the Agency Worker is entitled under the AWR, where applicable;
- 6.1.4. employer's National Insurance contributions;
- 6.1.5. any travel and hotel expenses, driving charges (for example motorway and bridge tolls, any congestion charge or similar charge) or other expenses as may have been agreed with the Hirer or, if there is no such agreement, such expenses as are reasonable; and
- 6.1.6. the Employment Business' commission, which is calculated as a percentage of the Agency Worker's hourly rate.
- 6.2. 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 Hirer 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.
- 6.3. The Employment Business reserves the right to vary the Charges agreed with the Hirer, by giving written notice to the Hirer:
- 6.3.1. in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the AWR; and/or
- 6.3.2. if there is any variation in the Relevant Terms and Conditions.
- 6.4. The Charges are invoiced to the Client on a weekly basis and are payable within 14 days as Standard, or as detailed on Schedule 3(Letter of Assignment).
- 6.5. The Hirer agrees not to withhold payment of the Employment Business Charges due to non-return of Tachograph data (Digital or Analogue).
- 6.6. In addition to the Charges, the Hirer will pay the Employment Business an amount equal to any bonus that the Hirer awards to the Agency Worker in accordance with clause 3.7 immediately following any such award and the Employment Business will pay any such bonus to the Agency Worker. For the avoidance of doubt, the Hirer will also pay any employer's National Insurance Contributions and the Employment Business' commission on the bonus (calculated using the same percentage rate as that used under clause 6.1.6) in addition to any bonus payable to the Agency Worker.
- 6.7. VAT is payable at the applicable rate on the entirety of the Charges and all sums payable under clause 6.5.
- 6.8. The Employment Business reserves the right to charge interest on invoiced amounts unpaid by the due date at the rate of 4% per annum above the base rate from time to time of the NatWest Bank from the due date until the date of payment.
- 6.9. No refunds are payable in respect of the Charges of the Employment Business.
- 6.10. For the avoidance of doubt the Charges do not include any tickets, fines, penalties or similar for parking, speeding or any other motoring or driving offences.
- 6.11. The Hirer's obligations under this clause 6 shall be performed without any right of the Hirer to invoke set-off, deductions, withholdings or other similar rights.
- 7. PAYMENT OF THE AGENCY WORKER**
- The Employment Business assumes responsibility for paying the Agency Worker and where appropriate, for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Agency Worker pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003.
- 8. TRANSFER FEES**
- 8.1. In the event of the direct Engagement by the Hirer of a Agency Worker supplied by the Employment Business, during the Assignment or within whichever is the longer of either:
- 14 weeks from the start of the first assignment (each new Assignment where there has been a break of more than 42 days (6 weeks) since the end of a previous Assignment shall also be considered to be the 'first Assignment' for these purposes); or
 - 8 weeks from the day after the last day of the Agency Worker worked on the Assignment.
- The Hirer shall be liable subject to electing to giving 7 days' notice, to either:
- a) **An extended period of hire** of the Agency Worker being 12 weeks during which the Hirer shall pay the current hourly charge agreed pursuant to clause 6.1 for each hour the Agency Worker is so Engaged or supplied; or
- b) **A Transfer Fee** calculated as follows: 15% of the Remuneration applicable during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the hourly charge referred to in clause 6.1 multiplied by 250. No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due.
- However, where the Hirer does not give such notice before the Agency Worker is engaged the parties agree that the Transfer Fee shall be due.
- 8.2. In the event of the Engagement by the Hirer of a Agency Worker supplied by the Employment Business being supplied by another employment business, during the Assignment or within whichever is the longer of either:
- 14 weeks from the start of the first assignment (each new Assignment where there has been a break of more than 42 days (6 weeks) since the end of a previous Assignment shall also be considered to be the 'first Assignment' for these purposes); or
 - 8 weeks from the day after the last day of the Agency Worker worked on the Assignment.
- The Hirer shall be liable subject to electing to give 30 days' notice, to either:
- a) **An extended period of hire** of the Agency Worker being 26 weeks during which the Hirer shall pay the current hourly charge agreed pursuant to clause 6.1 for each hour the Agency Worker is so Engaged or supplied; or
- b) **A Transfer Fee** calculated as follows: 15% of the Remuneration applicable during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the hourly charge referred to in clause 6.1 multiplied by 500. No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due.
- However, where the Hirer does not give such notice before the Agency Worker is engaged the parties agree that the Transfer Fee shall be due.
- 8.3. In the event that there is an Introduction of a Agency Worker to the Hirer which does not result in the supply of that Agency Worker by the Employment Business to the Hirer, but which leads to an Engagement of the Agency Worker by the Hirer either directly or pursuant to being supplied by another employment business within 6 months from the date of introduction the Hirer shall be liable, subject to electing upon giving 30 days' notice, to either:
- a) **A period of hire** of the Agency Worker being 12 weeks during which the Hirer shall pay the hourly charges agreed pursuant to clause 6.1 above for each hour the Agency Worker is so Engaged or supplied; or

- b) **An Introduction Fee** calculated as follows: 15% of the Remuneration applicable during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the hourly charges agreed pursuant to clause 6.1 multiplied by 250. No refund of the Introduction Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due. However, where the Hirer does not give such notice before the Agency Worker is engaged the parties agree that the Transfer Fee shall be due.
- 8.4. In the event that the Engagement of the Agency Worker is for a fixed term of less than 12 months provided that this has been notified in advance and in writing, the fee in clause 8.1(b), 8.2(b) or 8.3(b) calculated as a percentage of the Remuneration, will apply pro-rata.
- 8.5. In the event that the Agency Worker is introduced by the Hirer to a third party which results in the Engagement of the Agency Worker by the third party within 3 Months the Hirer shall be liable to pay a Transfer Fee calculated as follows: 15% of the Remuneration applicable during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the hourly charges referred to in clause 6.1 multiplied by 250. No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due.
- 9. SUITABILITY CHECKS**
Where the Agency Worker is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment, the Employment Business will take all reasonably practicable steps to obtain and offer to provide to the Hirer copies of any relevant qualifications or authorisations of the Agency Worker and such other reasonably practicable steps as are required to confirm that the Agency Worker is suitable for the Assignment. If the Employment Business has taken all reasonably practicable steps to obtain the information above and has been unable to do so fully it shall inform the Hirer of the steps it has taken to obtain this information in any event.
- 10. UNSUITABILITY OF THE AGENCY WORKER**
- 10.1. The Hirer undertakes to supervise the Agency Worker sufficiently to ensure the Hirer's satisfaction with the Agency Worker's standards of work. If the Hirer reasonably considers that the services of the Agency Worker are unsatisfactory, the Hirer may terminate the Assignment either by instructing the Agency Worker to leave the Assignment immediately, or by directing the Employment Business to remove the Agency Worker. The Employment Business may, in its absolute discretion, in such circumstances, reduce or cancel the Charges for the time worked by that Agency Worker, provided that the Hirer has notified the Employment Business immediately that they have asked the Agency Worker to leave the Assignment or the Assignment terminates:
10.1.1. within 4 hours of the Agency Worker commencing the Assignment where the Assignment is for more than 7 hours; or
10.1.2. 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 Employment Business within 48 hours of the termination of the Assignment.
- 10.2. The Employment Business shall notify the Hirer immediately if it receives or otherwise obtains information which gives the Employment Business reasonable grounds to believe that any Agency Worker supplied to the Hirer is unsuitable for the Assignment and shall be entitled to terminate the Assignment forthwith without prior notice and without liability. Notwithstanding, the Hirer shall remain liable for all Charges incurred prior to the termination of the Assignment.
- 10.3. The Hirer shall notify the Employment Business immediately and without delay and in any event within 24 hours if the Agency Worker fails to attend work or has notified the Hirer that they are unable to attend work for any reason.
- 11. TERMINATION OF THE ASSIGNMENT**
Any of the Hirer, the Employment Business or the Agency Worker may terminate an Assignment at any time without prior notice and without liability (except in the case of termination by the Hirer, who shall be liable for any Charges due under clause 6 above).
- 12. CONFIDENTIALITY AND DATA PROTECTION**
- 12.1. All information relating to an Agency Worker is confidential and subject to the Data Protection Laws and is provided solely for the purpose of providing work-finding services to the Hirer. Such information must not be used for any other purpose nor divulged to any third party and the Hirer undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times.
- 12.2. The Employment Business undertakes to keep confidential all Relevant Terms and Conditions that the Hirer discloses to the Employment Business and not to use such information except for the purposes of compliance with the AWR (including, for the avoidance of doubt and without limitation, when dealing with any request for information or complaint made by any Agency Worker or any AWR Claim).
- 12.3. Information relating to the Employment Business' business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.
- 13. INTELLECTUAL PROPERTY RIGHTS**
All copyright, trademarks, patents and other intellectual property rights deriving from the Assignment shall belong to the Hirer. Accordingly the Employment Business shall use its reasonable endeavours to ensure that the Agency Worker shall execute all such documents and do all such acts in order to give effect to the Hirer's rights pursuant to this clause.
- 14. LIABILITY**
- 14.1. Whilst reasonable efforts are made by the Employment Business to give satisfaction to the Hirer by ensuring reasonable standards of skill, integrity and reliability from the Agency Worker and to provide the same in accordance with the Assignment details as provided by the Hirer, no liability is accepted by the Employment Business for any loss, expense, damage or delay arising from any failure to provide any Agency Worker for all or part of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Agency Worker or if the Agency Worker terminates the Assignment for any reason. For the avoidance of doubt, the Employment Business 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.
- 14.2. Agency Workers supplied by the Employment Business pursuant to these Terms are engaged under contracts for services. They are not the employees of the Employment Business but are deemed to be under the supervision and direction of the Hirer from the time they report to take up duties and for the duration of the Assignment. The Hirer agrees to be responsible for all acts, errors or omissions of the Agency Worker, whether wilful, negligent or otherwise as though the Agency Worker was on the payroll of the Hirer.
- 14.3. The Hirer shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Agency Worker and about any requirements imposed by law or by any professional body, which must be satisfied if the Agency Worker is to fill the Assignment.
- 14.4. The Hirer will also comply in all respects with all statutory provisions as are in force from time to time including, for the avoidance of doubt, but not limited to the WTR, Health and Safety At Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999, the Driving Legislation, all statutory requirements set out in clause 3.9, by-laws, codes of practice and legal requirements to which the Hirer is ordinarily subject in respect of the Hirer's own staff (excluding the matters specifically mentioned in clause 7 above), including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Agency Worker during all Assignments.
- 14.5. The Hirer undertakes not to request the supply of an Agency Worker to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by a worker who has been transferred by the Hirer to perform the duties of a person on strike or taking official industrial action.
- 14.6. The Hirer shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business 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 Hirer.
- 14.7. The Hirer shall inform the Employment Business in writing of any AWR Claim which comes to the notice of the Hirer as soon possible but no later than 7 calendar days from the day on which any such AWR Claim comes to the notice of the Hirer.
- 14.8. If the Agency Worker brings, or threatens to bring, any AWR Claim, the Hirer undertakes to take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business and at the Hirer's own cost, to avoid, dispute, resist, mitigate, compromise or defend any such AWR Claim and to appeal against any judgment given in respect thereof.
- 15. NOTICES**
All notices which are required to be given in accordance with these Terms 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.
- 16. 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.
- 17. GOVERNING LAW AND JURISDICTION**
18. These Terms are governed by the law of England and are subject to the exclusive jurisdiction of the Courts of England & Wales.

SCHEDULE 1: Transfer Fees

- (a) The Transfer Fee referred to in clause 8 shall be agreed in writing between the Employment Business and the Client. In the event that the parties do not agree the amount of the Transfer Fee then the Employment Business shall be entitled to charge a fee calculated as follows: 15% of the Remuneration payable to the Consultancy during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the Charges multiplied by 250.
- (b) The Period of Extended Hire, referred to in clause 8, before the Client Engages a Consultancy shall be agreed in writing between the Employment Business and the Client. In the event that the parties do not agree the length of the Period of Extended Hire then the period shall be 12 weeks.

SCHEDULE 2: "COMPARABLE EMPLOYEE", "QUALIFYING PERIOD" AND "TEMPORARY WORK AGENCY"

"Comparable Employee" means as defined in Regulation 5(4) of the AWR being an employee of the Hirer who:

- (a) works for and under the supervision of the Hirer 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.

For the purpose of the definition of **"Qualifying Period"** in clause 1.1 of these Terms, 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 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.

BY SIGNING BELOW I THE SIGNATORY AGREE TO ALL OF THE ABOVE TERMS OF BUSINESS ON BEHALF OF THE CLIENT/HIRER.

(Signed for and on behalf of the Hirer)

(Date)

I Confirm I am authorised to sign this Agreement on behalf of the Client/Hirer (Print Name)

(Company Name)

