

TERMS OF BUSINESS WITH A HIRER FOR THE SUPPLY OF OPERATIVES

Name of Company: _____

1. DEFINITIONS AND INTERPRETATION

In these Terms the following definitions apply:

“Agency Legislation”	means Chapter 7, Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) as amended and Social Security (Categorisation of Earners) (Contribution) (Amendment) Regulations 2014.
“Agency Worker”	is defined in accordance with the Agency Workers Regulations 2010, Regulation 3.
“Assignment”	means assignment services to be performed by the Operative for the Hirer for a period of time during which the Operative 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”	means the Agency Worker Regulations, 2010.
“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 Employment Business’s charges as described in clause 6 and as may be varied from time to time in accordance with these Terms;
“Comparable Employee”	means as defined in Schedule 1 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 Operative 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 Legislation”	means: (a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data. (b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the party is subject, which relates to the protection of personal data.

means Red Recruitment Group Limited (registered company no. 9259639) of Unit 6 Empire Court, Albert Street, Redditch, B97 4DA

"Engagement"

means the engagement (including the Operative's acceptance of the Hirer's offer), employment or use of the Operative by the Hirer or by any third party to whom the Operative 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 Operative is an officer, employee or other representative; and "Engage", "Engages" and "Engaged" shall be construed accordingly;

"EU GDPR"

means the General Data Protection Regulation ((EU) 2016/679);

"First Assignment"

means:

- (a) the relevant Assignment; or
- (b) if, prior to the relevant Assignment:
 - (i) the Operative has worked in any assignment in the same role with the relevant Hirer as the role in which the Operative 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 Operative is supplied by one or more Temporary Work Agencies to the relevant Hirer to work temporarily for and under the supervision and direction of the relevant Hirer);

"Hirer"

means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Operative 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 Operative; or (ii) the Hirer's interview of the Operative (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 Operative; and, in any case, which leads to an Engagement of the temporary worker or the Operative; and "Introduced", "Introducing", and "Introduction" shall be construed accordingly;

"Losses"

means all losses, liabilities, damages, costs, expenses, fines, penalties or interest, whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands;

"Operative"

means the individual who is introduced by the Employment Business to provide services to the Hirer;

"Period of Extended Hire"

means any additional period that the Hirer wishes the Operative 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 Operative 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 1 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 Operative 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 Operative 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) 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 Operative for services provided to or on behalf of the Hirer or any third party. Where a company car is provided, a notional amount of £4000 will be added to the salary in order to calculate the Employment Business's fee;

“Temporary Work Agency”

means as defined in Schedule 1 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;

“UK GDPR”

has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;

“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; and

“WTR”

means the Working Time Regulations 1998.

- 1.1. Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.
- 1.2. The headings contained in these Terms are for convenience only and do not affect their interpretation.
- 1.3. 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 entire agreement between the Employment Business and the Hirer for the supply of the Operative's services by the Employment Business to the Hirer and are deemed to be accepted by the Hirer by virtue of its request for, interview with or Engagement of the Operative, or the passing of any information by the Hirer about an Operative to any third party following an Introduction. We will ask you to sign a copy of these Terms to confirm that you have read and agree to them. However, if we do not receive a signed copy of these Terms from you but you continue to take the supply of Operative's services from us then we will assume that you are in agreement with these Terms and you will be deemed to have accepted them.
- 2.2. 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 2.1 and clause 6.2, 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 (as amended) when introducing Operatives 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 Operative 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 Operative 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 Operative to commence the Assignment; and
 - 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's duties under the WTR by supplying any relevant information about 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 the WTR. If the Hirer requires the services of an Operative 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 Operative to work in excess of 48 hours.
- 3.3. The Hirer will comply with its obligations under Regulation 12 (Rights of agency workers in relation to access to collective facilities and amenities) and Regulation 13 (Rights of agency workers in relation to access to employment) of the AWR.
- 3.4. 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:
- 3.4.1. to inform the Employment Business of any Calendar Weeks in which the Operative 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;
 - 3.4.2. if, the Operative 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 which may count towards the Qualifying Period, 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;
 - 3.4.3. to inform the Employment Business if, the Operative 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:
 - 3.4.3.1. completed two or more assignments with the Hirer;
 - 3.4.3.2. completed at least one assignment with the Hirer and one or more earlier assignments with any member of the Hirer's Group; and/or
 - 3.4.3.3. 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;
 - 3.4.4. save where the Operative will not complete the Qualifying Period during the term of the Assignment, to:
 - 3.4.4.1. provide the Employment Business with written details of the basic working and employment conditions the Operative would be entitled to for doing the same job if the Operative 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;

- 3.4.4.2. 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;
- 3.4.4.3. 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
- 3.4.4.4. 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
- 3.4.5. save where the Operative 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.
- 3.5. In addition, for the purpose of awarding any bonus to which the Operative may be entitled under the AWR, the Hirer will:
 - 3.5.1. integrate the Operative into its relevant performance appraisal system;
 - 3.5.2. assess the Operative's performance;
 - 3.5.3. provide the Employment Business with copies of all documentation relating to any appraisal of the Operative, including without limitation written details of the outcome of any appraisal and the amount of any bonus awarded; and
 - 3.5.4. provide the Employment Business with all other assistance the Employment Business may request in connection with the assessment of the Operative's performance for the purpose of awarding any bonus.
- 3.6. 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.
- 3.7. The Hirer warrants that:
 - 3.7.1. all information and documentation supplied to the Employment Business in accordance with clauses 3.4, 3.5 and 3.6 is complete, accurate and up-to-date; and
 - 3.7.2. 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 3.4, 3.5 and 3.6.
- 3.8. Without prejudice to clauses 15.7 and 15.8, the Hirer shall inform the Employment Business in writing of any:
 - 3.8.1. oral or written complaint the Operative makes to the Hirer which is or may be a complaint connected with rights under the AWR; and
 - 3.8.2. written request for information relating to the Relevant Terms and Conditions that the Hirer receives from the Operative

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 Operative 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.
- 3.9. The Hirer undertakes that it knows of no reason why it would be detrimental to the interests of the Operative for the Operative to fill the Assignment.
- 3.10. The Hirer acknowledges and accepts that Operatives may be engaged via a supplier of the Employment Business and the Hirer confirms their understanding that, in some instances, the Operative may be self-employed.
- 3.11. Self-employed Operatives are free to supply suitably qualified representatives in order to perform the Assignment.
- 3.12. Where a Contract is entered into:
 - 3.12.1. after 6 April 2017 and the end Hirer is deemed to be a public authority under Chapter 10 of Part 2 of ITEPA; or
 - 3.12.2. on or after 6 April 2021 if the Assignment otherwise falls within scope of Chapter 10 of Part 2 of ITEPA,

the Hirer must confirm in written format to the Employment Business whether any Operative working through a Personal Service Company ("PSC") contractor, would be considered an employee of the Hirer if the services were provided under a contract directly between the PSC Operative and the Hirer ("IR35 Status Determination"). The Hirer must provide written confirmation as per Clause 3.12 before the services begin to be performed.

- 3.13. The Employment Business reserves the right to question the Hirer's IR35 Status Determination decision and how this was reached. Where the Employment Business questions the decision made by the Hirer, the Hirer must respond within 31 days beginning with the day they receive the written request.
- 3.14. The Hirer shall indemnify the Employment Business and its suppliers, acting in the position of the 'fee payer', from any Income Tax and National Insurance Contribution Liabilities due under Chapter 10 of Part 2 of ITEPA should the Hirer not meet its obligations under Clauses 3.12 and 3.13.
- 3.15. If required, the Hirer will provide appropriate confirmation of supervision, direction or control ("SDC") in writing to the Employment Business where Operatives are subject to PAYE and NIC in accordance with the Agency Legislation.
- 3.16. In the alternative, the Hirer shall provide sufficient evidence, as required by the Employment Business, to confirm that Operatives involvement in the provision of services, is not subject to the right of SDC by any persons. The Hirer warrants that any information provided to the Employment Business pertinent to the Agency Legislation is correct and upon which the Employment Business is able to reply.
- 3.17. Where Operatives who fall within the definition of an Agency Worker, become pregnant the Hirer will conduct such checks and assessments as are necessary to ensure that the current Assignment remains suitable.
- 3.18. Following completion of the 12-week qualifying period, the Hirer will recognise and honour the right of the Operative to take paid time off in respect of ante natal appointments and will continue to pay the Charge Rate in respect of such periods.
- 3.19. With regard to Clause 3.17, where it is established that the Assignment is no longer suitable, the Employment Business will seek to place the Operative on an alternative assignment which is suitable. Where this involves any increase in pay due to the worker, the Hirer will increase the Charge Rate to reflect the increased cost.
- 3.20. With regard to Clause 3.19, where no suitable alternative assignment can be found, the Hirer agrees to continue to pay the Charge Rate for the period of assignment originally offered to the Operative.

4. OBLIGATIONS OF THE EMPLOYMENT BUSINESS

- 4.1. When Introducing an Operative to the Hirer the Employment Business shall inform the Hirer:
 - 4.1.1. of the identity of the Operative;
 - 4.1.2. that the Operative 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 Operative is willing to work in the Assignment; and
 - 4.1.4. of 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 Operative is Introduced for an Assignment in the same position as one in which the Operative 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. The Employment Business will be responsible for the determination of tax status of self-employed Operatives under the Agency Legislation by reference to SDC, together with any statutory reporting requirements in relation to the use of self-employed subcontractors.
- 4.4. The Employment Business will be responsible for administering any Income Tax, National Insurance Contributions (NICs) and any deductions under the Construction Industry Scheme (CIS) together with other taxes and statutory deductions payable in respect of the Operatives engaged on a Contract, including the application of the Agency Legislation.

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's timesheet verifying the number of hours worked by the Operative 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 Operative 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 Operative. **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 Operative. In the event that the Hirer is dissatisfied with the Operative the provisions of clause 10 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 Operative and comprise the following:

- 6.1.1. the Operative's hourly rate of pay;
- 6.1.2. an amount equal to any paid holiday leave to which the Operative 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 Operative is entitled under the AWR, where applicable;
- 6.1.4. employer's National Insurance, pension and apprentice levy contributions, each where applicable;
- 6.1.5. any travel, hotel 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's commission, which is calculated as a percentage of the Operative's hourly rate.

To the extent that the Employment Business provides the Hirer with a breakdown of Charges detailing any or all of the elements listed in clauses 6.1.1 to 6.1.6, above, such breakdown is indicative only and is provided for information purposes. The Hirer shall pay the full amount of the Charges agreed with the Employment Business and shall not be entitled to a refund in the event of a recalculation of any of the elements listed in clauses 6.1.1 to 6.1.6.

6.2. Notwithstanding clause 6.1, 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, the WTR and the Pensions Act 2008; and/or
- 6.2.2. if there is any variation in the Relevant Terms and Conditions.

6.3. The Employment Business will invoice the Charges to the Hirer on a weekly basis. The Hirer will pay the Charges within 30 days of the date of the invoice. Where the Employment Business has agreed a credit limit with the Hirer, the Hirer acknowledges and accepts that in the event that the total value of the Hirer's unpaid invoices exceeds the agreed credit limit the Hirer shall immediately pay such an amount as is necessary to reduce the total amount due and owing to the Employment Business below the level of the credit limit.

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 Operative in accordance with clause 3.5 immediately following any such award and the Employment Business will pay any such bonus to the Operative. For the avoidance of doubt, the Hirer will also pay any employer's National Insurance Contributions and the Employment Business's 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 Operative.

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 under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.

6.7. The Employment Business will not refund any 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 OPERATIVE

7.1. The Employment Business is responsible for paying the Operative and where appropriate, for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Operative pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003.

7.2. Where the Employment Business has engaged a third-party payroll partner to administer payments and deductions it shall procure that the relevant payroll partner pays the Operative and makes the relevant deductions and payments of National Insurance Contributions and PAYE Income Tax applicable to the Operative pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003.

- 7.3. The Employment Business may delay payment of the Operative for a reasonable period of time where the Hirer has failed to provide the Employment Business with proof of the hours worked by the Operative.

8. TRANSFER FEES

- 8.1. The Hirer shall be liable to pay a Transfer Fee if the Hirer Engages an Operative Introduced by the Employment Business other than via the Employment Business or Introduces the Operative to a third party and such Introduction results in an Engagement of the Operative by the third party other than via the Employment Business and:
- 8.1.1. where the Operative 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 Operative has not been supplied, such Engagement takes place within 6 months from the date of the Introduction to the Hirer.
- 8.2. The Transfer Fee will be calculated as a percentage of the Remuneration payable to the Operative during the first 6 months of the Engagement (as shown in the following table) or, if the actual amount of the Remuneration is not known, the hourly charges set out in clause 6.1 above multiplied by 300.

ANNUAL INCOME	CONSULTANCY FEE
Up to £20,000	20%
£20,001 - £35,000	25%
£35,001 and above	30%

Minimum Fee £2,500

- 8.3. Discussions will take place between the Hirer and the Employment Business on a case by case basis regarding any enhancement of these terms.
- 8.4. If the Hirer wishes to Engage the Operative other than via the Employment Business without liability to pay a Transfer Fee, the Hirer may, on giving one week's written notice to the Employment Business, engage the Operative for the Period of Extended Hire of 26 weeks.
- 8.5. During such Period of Extended Hire the Employment Business shall supply the Operative on the same terms on which s/he has or would have been supplied during the Assignment and in any case on terms no less favourable than those terms which applied immediately before the Employment Business received the notice in clause 8.4; and the Hirer shall continue to pay the Charges set out in clause 6. If the Employment Business is unable to supply the Operative 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 Operative on the same terms as the Assignment; but the Operative 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 Operative before being Engaged by the Hirer. If the Hirer fails to give notice of its intention to Engage the Operative other than via the Employment Business before such Engagement commences, the parties agree that the Transfer Fee shall be due in full.
- 8.6. 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 2 pro-rata. Such reduction is subject to the Hirer Engaging the Operative for the agreed fixed term. Should the Hirer extend the Operative's Engagement or re-Engage the Operative within 12 months from the commencement of the initial Engagement the Employment Business reserves the right to recover the balance of the Transfer Fee.
- 8.7. The Employment Business will not refund the Transfer Fee in the event that the Engagement of the Operative other than via the Employment Business by the Hirer or by a third party to which the Hirer introduces the Operative terminates or terminates before the end of the fixed term referred to in clause 8.6.
- 8.8. VAT is payable 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 Operative 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 Operative; 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 Operative 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 Operative 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 Operative whether during the course of the Assignment, the Operative will be required to work with, care for or attend one or more Vulnerable Persons or engage in regulated activity as defined in 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 Operative for the Assignment.
- 9.4. In particular in the event that the Hirer removes an Operative from an Assignment in circumstances which would require the Employment Business to provide information to the Disclosure and Barring Service (or the 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 OPERATIVE

- 10.1. The Hirer undertakes to monitor the work performed by the Operative sufficiently to ensure the Hirer's satisfaction with the Operative's standards of work. If the Hirer reasonably considers that the services of the Operative are unsatisfactory, the Hirer may terminate the Assignment either by instructing the Operative to leave the Assignment immediately, or by directing the Employment Business to remove the Operative. The Employment Business may, in its absolute discretion, in such circumstances, reduce or cancel the Charges for the time worked by that Operative, provided that the Hirer has notified the Employment Business immediately that they have asked the Operative to leave the Assignment or the Assignment terminates:
 - 10.1.1. within 4 hours of the Operative 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 Operative 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 Operative 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 2 hours if the Operative fails to attend work or has notified the Hirer that they are unable to attend work for any reason.

11. TERMINATION OF THE ASSIGNMENT

- 11.1. The Employment Business may terminate an Assignment by giving 14 days' notice in writing to the Hirer.
- 11.2. The Hirer may terminate an Assignment by giving 28 days' notice in writing to the Employment Business.
- 11.3. Either the Hirer or the Employment Business may terminate an Assignment with immediate effect and without notice if;
 - 11.3.1. The other party commits any serious and irremediable breach of the Contract; or
 - 11.3.2. The other party commits any serious but remediable breach of Contract and fails to remedy such breach within the period of 21 days from the service on the party of a notice specifying the breach and requiring it to be remedied.
- 11.4. The Employment Business shall be entitled to terminate the Contract forthwith by notice in writing to the Hirer if;
 - 11.4.1. 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;
 - 11.4.2. the Hirer continuously fails to make relevant payments to the Employment Business. The Employment Business reserves the right to remove the Operative from its service provision to the Hirer without notice until such time invoices have been paid up to date.
 - 11.4.3. if the sum owed to the Employment Business surpasses the Hirer's insured credit limit for trade, and payment arrangements are not made within 7 days of surpassing said credit limit, whether or not invoices are due yet. Information regarding the Hirer's credit limit for trade will be made readily available on each statement.
- 11.5. On termination of the Contract for any reason, the Employment Business shall remain entitled to be paid the relevant Charges in respect of all Assignments executed or partly executed prior to the date of termination of the Contract.
- 11.6. The Hirer may without notice and without liability instruct the Employment Business to cease work pursuant to a Contract at any time, where:
 - 11.6.1. the Hirer reasonably believes that the Employment Business has not observed any condition of confidentiality applicable to the Employment Business from time to time;

- 11.6.2. the Employment Business becomes insolvent, dissolved or subject to a winding up petition;
- 11.6.3. any representative of the Employment Business working on the Contract is found guilty of any fraud, dishonesty or serious misconduct; or
- 11.6.4. the Employment Business is unable to perform the Assignment for over five days.
- 11.7. Termination of the Contract shall have no effect on any other agreements between the parties, which shall continue in full force and effect until terminated in accordance with their Terms.
- 11.8. Clause 11 sets out the entire basis on which the Contract may be terminated.

12. CONFIDENTIALITY

- 12.1. All information relating to an Operative is Confidential Information and is provided solely for the purpose of providing work-finding services to the Hirer.
- 12.2. Each Party (“**Receiving Party**”) will keep the Confidential Information of the other Party (“**Supplying Party**”) confidential and secret, whether disclosed to or received by the Receiving Party. The Receiving Party will only use the Confidential Information of the Supplying Party for the purpose of and for performing the Receiving Party's obligations under this Contract. The Receiving Party will inform its officers, employees and agents of the Receiving Party's obligations under the provisions of this clause 12.2 and ensure that the Receiving Party's officers, employees and agents meet the obligations.
- 12.3. The obligations of clause 12.2 will not apply to any information which:
 - 12.3.1. was known to or in the possession of the Receiving Party before it was provided to the Receiving Party by the Supplying Party;
 - 12.3.2. is, or becomes, publicly available through no fault of the Receiving Party;
 - 12.3.3. is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;
 - 12.3.4. was developed by the Receiving Party, or on its behalf by a third party who had no direct access to, or use or knowledge of the confidential information supplied by the Supplying Party; or
 - 12.3.5. is required to be disclosed by order of a court of competent jurisdiction.
- 12.4. The obligations set out in clauses 12.2 and 12.3 will survive termination of this Contract.

13. DATA PROTECTION

- 13.1. The following definitions apply in this clause 13:
 - Agreed Purposes:** the transfer of personal data between the parties in accordance with these Terms for the purpose of the Employment Business supplying Operatives to the Hirer.
 - Controller, data controller, processor, data processor, data subject, personal data, processing and appropriate technical and organisational measures:** as set out in the Data Protection Legislation.
 - Permitted Recipients:** the parties to this Contract, the employees of each party, any third parties engaged to perform obligations in connection with this Contract.
 - Shared Personal Data:** the personal data to be shared between the parties under this Contract.
- 13.2. This clause 13 sets out the framework for the sharing of personal data between the parties as data controllers. Each party acknowledges that one party (the “**Data Discloser**”) will regularly disclose to the other party (the “**Data Recipient**”) Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 13.3. The Employment Business will process and transfer the personal data of Operatives to the Hirer in order to fulfil these Terms. The Employment Business hereby confirms that specific consent will be obtained from Operatives in order to process and transfer their personal data to the Hirer or any other third party.
- 13.4. Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this Contract with immediate effect.
- 13.5. Each party shall:
 - 13.5.1. ensure that it has all necessary consents and notices in place to enable lawful transfer of the Shared Personal Data to the Data Recipient for the Agreed Purposes;
 - 13.5.2. give full information to any data subject whose personal data may be processed under this Contract of the nature such processing. This includes giving notice that, on the termination of this Contract, personal data relating to them

may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;

- 13.5.3. process the Shared Personal Data only for the Agreed Purposes;
 - 13.5.4. not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - 13.5.5. ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by this Contract;
 - 13.5.6. ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and
 - 13.5.7. not transfer any personal data received from the Data Discloser outside the UK unless the transferor ensures that:
 - (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or
 - (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or
 - (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or
 - (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.
- 13.6. Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:
- 13.6.1. consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
 - 13.6.2. promptly inform the other party about the receipt of any data subject access request;
 - 13.6.3. provide the other party with reasonable assistance in complying with any data subject access request;
 - 13.6.4. not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;
 - 13.6.5. assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 13.6.6. notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
 - 13.6.7. at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data;
 - 13.6.8. use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
 - 13.6.9. maintain complete and accurate records and information to demonstrate its compliance with this clause 13; and
 - 13.6.10. provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1. 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 Operative shall execute all such documents and do all such acts in order to give effect to the Hirer's rights pursuant to this clause.

15. LIABILITY

- 15.1. 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 Operative 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 Operative for all or part of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Operative or if the Operative 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.
- 15.2. Operatives 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 Operative, whether wilful, negligent or otherwise as though the Operative was on the payroll of the Hirer.

- 15.3. The Hirer shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Operative and about any requirements imposed by law or by any professional body, which must be satisfied if the Operative is to fill the Assignment.
- 15.4. 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, the Data Protection Legislation, Health and Safety At Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999 (as amended), 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 Operative during all Assignments.
- 15.5. The Hirer undertakes not to request the supply of an Operative 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.
- 15.6. 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.
- 15.7. 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.
- 15.8. If the Operative 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.

16. 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, including 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.

17. 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.

18. RIGHTS OF THIRD PARTIES

None of the provisions of these Terms are intended to be for the benefit of or enforceable by third parties and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

19. 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.

PLEASE SIGN AND RETURN

I acknowledge receipt of and confirm I am authorised to agree to your Terms and Conditions of Business for the supply of Operatives.

By signing these terms you confirm that you have read and agree to them. If we do not receive a signed copy of these Terms from you but you continue to take the supply of Operative's services from us then we will assume that you are in agreement with these Terms and you will be deemed to have accepted them.

Signed for and on behalf of the Hirer

Print Name

Date

Company Name

SCHEDULE 1: “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 Operative having regard, where relevant, to whether the employee and the Operative have a similar level of qualification and skill; and
- (b) works or is based at the same establishment as the Operative 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 of these Terms, when calculating whether any weeks completed with the Hirer count as continuous towards the Qualifying Period, where:

- (a) the Operative has started working during an assignment and there is a break, either between assignments or during an assignment, when the Operative 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 Operative 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 Operative 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 Operative returns to work;
 - (iv) wholly for the purpose of taking time off or leave, whether statutory or contractual, to which the Operative 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 Operative 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 Operative returns to work in the same role with the Hirer,

any weeks during which the Operative 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 Operative works for the Hirer after the break. In addition, when calculating the number of weeks during which the Operative has worked, where the Operative 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 Operative 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 Operative 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.