

Terms of Engagement for the provision of Temporary Workers

THIS AGREEMENT is made on

BETWEEN:

- (1) [.....] incorporated and registered in Scotland, England and Wales with company number [.....] whose registered office is at [.....] (“Client”).
- (2) **The Temp Agency** incorporated and registered in Scotland whose office is at Studio 6, 2 Commercial Street, Edinburgh EH6 6JA (“**Employment Business**”).

BACKGROUND

- A From time to time the Client (and other members of the group of companies of which the Client is a part) may have vacancies for temporary workers.
- B The Employment Business:
- (i) is an “Employment Agency” within the meaning of the Employment Agencies Act 1973 and Conduct of Employment Agencies and Employment Business Regulations 2003; and
 - (ii) operates as a “Temporary Work Agency” as per the definition in Regulation 4 of the Agency Workers Regulations 2010 and is involved in the direct supply of Temporary Workers to clients.
- C The Employment Business has agreed to provide temporary workers to the Client (or other members of its group of companies) in return for a fee as more particularly described below.

IT IS AGREED as follows:

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply to this agreement.

“**Assignment**” means the Client’s (or any Group Company’s) requirement for the performance of certain services.

“**Assignment Charges**” means the charges due from the Client to the Employment Business in respect of the performance of the Assignment Services, calculated in accordance with clause 9.1.

“**Assignment Confirmation Note**” shall have the meaning given to it in clause 4.1.

“**Assignment Services**” means, in respect of an Assignment, the services to be undertaken by the Temporary Worker in order to fulfil such Assignment.

“**AWR 2010**” means the Agency Workers Regulations 2010.

“**Business Day**” means a day other than a Saturday, Sunday or public or statutory holiday.

“**Commencement Date**” means the earlier of: (i) the date on which the Employment Business commences the performance of the Introductory Services; and (ii) the date on which this agreement is signed by the parties.

“**Comparable Employee**” means, in relation to a Temporary Worker, an employee of the Client (or any Group Company) engaged in broadly similar work to that of the Temporary Worker (whether or not at the same premises or employed by the same entity).

“**Conduct Regulations 2003**” means the Conduct of Employment Agencies and Employment Business Regulations 2003 as amended.

“**Employment**” means the employment, whether under a contract of service or otherwise on a permanent basis of a Temporary Worker by or on behalf of the Client (or any Group Company) or by any third party to whom the

Candidate has been introduced by the Client (or any Group Company) directly or indirectly in any capacity.

“Engagement” means either: (i) the Employment of a Temporary Worker; or (ii) the engagement directly or indirectly of a Temporary Worker by the Client (or any Group Company) or by any third party to whom the Temporary Worker has been introduced by the Client (or any Group Company) directly or indirectly in any capacity under a contract for services, consultancy, agency licence, franchise or partnership agreement, or any other engagement whether on a permanent or temporary basis or otherwise, and **“Engage”** and **“Engaged”** shall be construed accordingly.

“Engaging Entity” means the entity (whether the Client, any Group Company or by any third party to whom the Temporary Worker has been introduced) that Engages a Temporary Worker.

“Group Company” means each and any subsidiaries or holding company from time to time of that the Client, and each any subsidiary from time to time of a holding company of the Client.

“Initial Rate of Pay” means the rate of pay detailed in the Assignment Confirmation Note that will be paid to the Temporary Worker prior to completion of the Qualifying Period (subject to any deductions that the Employment Business is required to make by law and to any deductions which the Temporary Worker has specifically agreed can be made). Such rate will be paid for each hour worked during an Assignment (to the nearest [minute]) during the Qualifying Period weekly in arrears.

“Insolvency Event” means: (a) the relevant party is unable or unwilling to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; (b) the relevant party commences negotiations with all or any class of its creditors with a view to rescheduling debts, or makes a proposal/enters into any compromise or arrangement with its creditors; (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the relevant party; (d) the relevant party is the subject of a bankruptcy petition or order; (e) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the relevant party, or a person/entity has become entitled to appoint/has appointed an administrative receiver or a receiver (or the equivalent of any of the above in any other jurisdiction).

“Introduction” shall have the meaning given to it in clause 5.2 and **“Introduce”** and **“Introduced”** shall be construed accordingly.

“Introduction Services” means the provision of Introductions by the Employment Business, as more particularly described in clause 5.

“Losses” means any and all claims and direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, expenses, damages and expenses (including legal and other professional fees and expenses) whether arising from tort (including negligence), breach of contract or otherwise, awarded against or incurred or paid by a party.

“Pay” means any and all sums payable to the Temporary Worker in connection with an Assignment including any fee, bonus, commission, holiday pay or other emolument referable to the Assignment,

“Post Qualifying Period Rate of Pay” means the rate of pay that will be paid to the Temporary Worker on completion of the Qualifying Period, if this rate is higher than the Initial Rate of Pay (subject to any deductions that the Employment Business is required to make by law and to any deductions that the Temporary Worker has specifically agreed can be made). Such rate will be paid for each hour worked during an Assignment (to the nearest [quarter hour]) following completion of the Qualifying Period weekly in arrears.

“Qualifying Period” means, in respect of a Temporary Worker, a period of 12 continuous calendar weeks commencing on the date such Temporary Worker commences, as defined in regulation 7 of the AWR 2010, subject always to regulations 8 and 9 of the AWR 2010.

“Refund” means, in respect of a particular Temporary Worker, a rebate of the Transfer Charges relating to such Temporary Worker, being a percentage of such Transfer Charges calculated according to the duration of the Engagement, as set out in the table below. An Engagement is deemed to come to an end on the expiry of any notice of termination whether given by the Engaging Entity or the Temporary Worker and whether or not the Temporary Worker is required, or does work the applicable period of notice.

Engagement Termination	% of Transfer Charge
Weeks [1 or 2] of the Engagement	[100]

Weeks [3 or 4] of the Engagement	[75]
Weeks [5 or 6] of the Engagement	[50]
Weeks [7 or 8] of the Engagement	[25]
Weeks [9] onwards of the Engagement	[0]

“**Relevant Period**” shall have the meaning set out in regulation 10(5) and (6) of the Conduct Regulations 2003.

“**Remuneration**” means, in respect of an Engagement, the remuneration of the Temporary Worker, including fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car, holiday pay and all other payments and benefits (taxable or otherwise).

“**Requirements**” shall have the meaning given to it in clause 4.1.7.

“**Temporary Worker**” means a worker Introduced to the Client (or Group Company, as applicable) in respect of an Assignment, who is deemed to be an agency worker for the purposes of regulation 3 of the AWR 2010.

“**Transfer Charges**” means, in respect of a particular Engagement, a sum equal to: 30% of the Remuneration payable to the Temporary Worker during the first 12 months of such Engagement; or (ii) if the actual amount of the Remuneration is not known, the Employment Business’ estimation of the Remuneration taking into account the market rate level of remuneration applicable for the position in which the Temporary Worker has been Engaged and with regard to any information supplied to the Employment Business by the Client (or any Group Company) and/or comparable positions in the market generally.

“**WTR 1998**” means the Working Time Regulations 1998.

- 1.2 A reference to a “**company**” shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 1.5 A reference to a particular law or regulation is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

2 TERM

This agreement shall commence on the Commencement Date and it shall continue until terminated in accordance with its terms.

3 IDENTIFICATION OF ASSIGNMENTS

The Client (or any Group Company) shall from time to time during the term of this agreement identify Assignments in respect of which it wishes the Employment Business to undertake the Introduction Services.

4 ASSIGNMENT INFORMATION

- 4.1 In respect of each Assignment, the Client (or the applicable Group Company) shall provide the following information (“**Assignment Information**”):
 - 4.1.1 the nature of its business (if not previously provided);
 - 4.1.2 the date on which it requires the Temporary Worker to commence the Assignment Services;
 - 4.1.3 the duration, or likely duration, of the Assignment Services;
 - 4.1.4 a summary of the Assignment Services to be undertaken including details as to where such services are to be performed (if appropriate);
 - 4.1.5 details of the hours during which the Assignment Services are to be performed (if appropriate);

- 4.1.6 details of: (i) the Initial Rate of Pay; (ii) the Post Qualifying Period Rate of Pay; (iii) any Other Qualify Period Payments; (iv) any expenses payable by or to the Temporary Worker; and (v) the rate of pay of Comparable Employees;
- 4.1.7 details of the experience, training, qualifications and any authorisation which the Client (or the applicable Group Company) considers are necessary, or which are required by law, or by any professional body, for the Temporary Worker to possess in order to provide the Assignment Services (“**Requirements**”);
- 4.1.8 details of any health and safety or other regulatory matters about which the Employment Business is required or would reasonably be expected to inform the Temporary Worker (which shall include any risks together with details of the steps the Client (or the applicable Group Company) has taken to prevent or control such risks);
- 4.1.9 details of any requirements imposed by law or any professional body, which must be satisfied by the Temporary Worker prior to the Temporary Worker accepting the Assignment or commencing the provision of the Assignment Services.

The Assignment Information will normally be contained in a written notification (an “**Assignment Confirmation Note**”). Where any Assignment Information is not given in paper form or by electronic means, the Client shall confirm it in writing or electronically as soon as reasonably possible and in any event no later than the day an Assignment Offer is made.

- 4.2 The Client consents to the disclosure by the Employment Business of information relating to the Client (or the applicable Group Company) and information relating to the Assignment (including the information supplied pursuant to clause 4.1) to potential Temporary Workers.
- 4.3 Unless requested otherwise, clause 4.1 will not apply where the Temporary Worker is being offered an Assignment to work in the same position for the Client (or the applicable Group Company) as one in which that Temporary Worker has previously been supplied within the previous 5 Business Days and the Assignment Information (with the exception of the date or likely duration of the Assignment) is the same as that already given.
- 4.4 Subject to clause 4.3, where the Assignment is intended to last for 5 consecutive Business Days or less and the Assignment Information has previously been given by the Client (or the applicable Group Company) remains unchanged, the Employment Business shall provide written confirmation of the identity of the Client and the likely duration of the Assignment.
- 4.5 The Client agrees that, if at any time it (or any Group Company) has any reason to believe that the Introduction of any Temporary Worker for an Assignment, or the performance of any Assignment Services by any Temporary Worker could be detrimental to the interests of the Employment Business, it shall provide details of such potential detriment to the Employment Business immediately.
- 4.6 The Client agrees not to (and shall ensure than no Group Company shall) provide an Assignment Notice where the Assignment is intended (in whole or in part) to cover the duties normally undertaken by an individual (or individuals):
 - 4.6.1 who is (/are) on strike or taking part in some other form of official industrial action; or
 - 4.6.2 who has (/have) been transferred by the Client (or any Group Company) to undertake the duties normally undertaken by an individual (or individuals) on strike or taking part in some other form of official industrial action.

5 INTRODUCTIONS

- 5.1 Following receipt of an Assignment Confirmation Note, the Employment Business shall use its reasonable endeavours to search for Temporary Workers which meet the Requirements for the Assignment, unless the Client (or the applicable Group Company) has requested a specific Temporary Worker.
- 5.2 Where the Client (or the applicable Group Company):
 - 5.2.1 has not requested a specific Temporary Worker, the Employment Business shall provide to the Client (or the applicable Group Company) details of one or more Temporary Workers that it believes may be suitable for the Assignment and which it believes meet the Requirements based on information supplied to it by the applicable Temporary Worker; or
 - 5.2.2 has requested a specific Temporary Worker, the Employment Business shall provide to the Client (or the applicable Group Company) details of such Temporary Worker,

(which shall include any supply of information (in any format) which identifies the Temporary Worker (an “**Introduction**”).

- 5.3 The provision of such information shall constitute an Introduction whether or not the Client (or the applicable Group Company) had any knowledge of the Temporary Worker prior to such supply of information.
- 5.4 The Employment Business shall, in respect of each Temporary Worker Introduced to the Client (or the applicable Group Company):
- 5.4.1 confirm the identity of such Temporary Worker; and
- 5.4.2 advise the Client (or the applicable Group Company) of any information it acquires in connection with the suitability of the Temporary Worker for the work in terms of experience, training, qualification and authorisation which the Client (or the applicable Group Company) considers necessary or which is required by law or by a professional body to work in the notified position.

6 ASSIGNMENT OFFER & ACCEPTANCE

- 6.1 Following receipt of an Introduction, the Client (or the applicable Group Company) shall consider the suitability of the Temporary Worker in respect of the Assignment and shall determine in its sole discretion whether or not it wishes to use the Temporary Worker to perform the Assignment Services and shall notify the Employment Business of the same. Upon the provision of such notice, the Client (on its own behalf or on behalf of the applicable Group Company) shall be bound to purchase the Assignment Services pursuant to the terms of this agreement, subject to the creation of a Temporary Worker Contract pursuant to clause 6.2.
- 6.2 Where the Client (or the applicable Group Company) has notified the Employment Business that it wishes to use a Temporary Worker which has been Introduced by the Employment Business, the Employment Business shall use its reasonable endeavours to enter into a contract with the Temporary Worker to perform the Assignment Services ("**Temporary Worker Contract**") [which shall incorporate the terms set out in the Schedule – delete if not required]. Once a Temporary Worker Contract has been formed, the Employment Business shall notify the Client (or the applicable Group Company) of the same.

7 ASSIGNMENT SERVICES

- 7.1 The Assignment Services shall not commence until the Temporary Worker Contract is entered into between the Employment Business and the Temporary Worker.
- 7.2 The Client acknowledges that the Employment Business is essentially an introducer of the services of the various Temporary Workers and save to the extent set out in this agreement is not responsible for: (i) ensuring the suitability of the Temporary Worker; or (ii) guaranteeing to supply a Temporary Worker for any or all of an Assignment.
- 7.3 The Client shall be responsible for obtaining any work and or other permits and for ensuring that the Temporary Worker satisfies any medical requirements or other qualifications that may be appropriate or required by law.
- 7.4 The Client (or the applicable Group Company) shall exercise all supervision, direction and control over the manner, time and place in which each Temporary Worker carries out their work for the Client during the duration of the Assignment. For the avoidance of doubt, the Temporary Worker is not under the Employment Business' supervision, direction or control.
- 7.5 The Client (or the applicable Group Company) shall comply with all obligations, duties and regulations (whether statutory or otherwise) in any way arising from or directly or indirectly connected with the services rendered by the Temporary Worker and in particular undertakes to comply with the obligations imposed on the Client (or the applicable Group Company) by the AWR 2010 and shall:
- 7.5.1 ensure that it complies with Temporary Worker's right to basic working and employment conditions, in relation to the duration of working time and appropriate rest breaks and holidays and that the Temporary Workers have full access to its collective facilities and amenities (which shall be taken to include canteen or similar facilities, child care facilities and transport facilities) and is informed of any relevant vacancies in accordance with those rights to which the Temporary Worker is entitled to from day one of the Assignment under regulation 12 of the AWR 2010; and
- 7.5.2 provide the Employment Business with such information as it reasonably requires to respond to an information request made by a Temporary Worker within 7 days of the Employment Business requesting such information.
- 7.6 The Employment Business shall notify the Client promptly if it receives any information which indicates that a Temporary Worker which has been contracted to provide Assignment Services may be unsuitable to do so, provided that it is permitted to share such information.
- 7.7 The Employment Business is responsible for paying the Temporary Worker.

8 VERIFICATION OF ASSIGNMENT SERVICES

- 8.1 At the end of each [week] of an Assignment (or at the end of an Assignment where such Assignment is for a period of less than 1 [week]), the Temporary Worker shall provide to the Client (or the applicable Group Company) a form containing details of the Assignment Services performed and the Temporary Worker Charges due (in accordance with clause 9.1) in such [week] ("**Verification Form**" known as "**timesheet**"). The Client (or the applicable Group Company) shall verify the Assignment Services undertaken by the Temporary Worker by signing such Verification Form promptly (and in any event, within [1] days) following receipt of such form from the Temporary Worker and shall return the same to the Temporary Worker.
- 8.2 Signature of the Verification Form by the Client (or the applicable Group Company) constitutes acceptance by the Client that the Assignment Services have been provided satisfactorily and in accordance with this agreement.
- 8.3 If the Client (or the applicable Group Company): (i) does not sign the Verification Form in accordance with clause 8.1; and (ii) does not raise a valid dispute regarding the content of such Verification Form, within [insert] days following receipt of such form from the Temporary Worker, the Verification Form shall be deemed to be accepted by the Client.
- 8.4 In the event that the Client (or the applicable Group Company) is dissatisfied with the Assignment Services provided by the Temporary Worker, the provisions of clause 10 shall apply.

9 CHARGES

9.1 Assignment Charges

9.1.1 The Assignment Charges shall consist of:

9.1.1.1 the "**Temporary Worker Charges**", being:

- (i) during the Qualifying Period, the Initial Rate of Pay;
- (ii) following the Qualifying Period, the Post Qualifying Period Rate of Pay; and
- (iii) any fee, bonus, commission, holiday pay or other emolument referable to the Assignment, but excluding such payments as are set out in regulation 6(3) of the AWR 2010, such as occupational sick pay and pension contributions;
- (iv) plus national insurance contributions required to be paid by the Employment Business,

unless the parties subsequently agree in writing a variation to such charges; and

9.1.1.2 the "**Employment Business' Commission**", calculated as [25] percent of the Temporary Worker Charges.

9.1.2 The Employment Business reserves the right to vary any element of the Assignment Charges in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, by giving no less than [1 week's] written notice to the Client.

9.1.3 The Employment Business shall invoice the Client for the Assignment Charges in arrears on a [weekly or daily] basis. Invoices shall be payable by the Client within [insert period] of the date of the applicable invoice. Payments must be made without deduction or set-off.

9.2 Transfer Charges

9.2.1 Where any Engagement takes place:

- 9.2.1.1 within **[6 months]** of an Introduction;
- 9.2.1.2 during an Assignment; or
- 9.2.1.3 within **[6 months]** of the end of an Assignment,

the Client shall: (i) be obliged to notify the Employment Business of the same within [7] days of the Engagement; and (ii) pay the Employment Business the Transfer Charges.

9.2.2 Refunds

If an Engagement commences but is subsequently terminated by either the Temporary Worker or the Engaging Entity, the Client will, subject to the application of clauses 9.2.3 and 9.2.4, be entitled to a Refund. The Client shall only be entitled to a Refund in respect of a particular Engagement if:

9.2.2.1 all moneys due to the Employment Business under this agreement have been paid by the Client in accordance with this clause 9;

9.2.2.2 such non-commencement/termination is not as a result of redundancy, pregnancy, injury to health, or by reason of the Temporary Worker's race, sex, marital status, sexual orientation, disability, religion or age, gender reassignment or any other protected characteristic under the Equality Act 2010;

9.2.2.3 such termination has not arisen where in the Employment Business' reasonable opinion the Engaging Entity has entered in the Engagement with the prior or likely intention of terminating such Engagement either without proper cause or with a view to obtaining a refund unfairly;

9.2.2.4 the Client serves notice on the Employment Business in writing of the:

9.2.2.4.1 termination of the Engagement within 7 days of such termination. For the purposes of this clause, the date of termination of the Engagement shall be the date on which the Temporary Worker: (i) ceases working; or (ii) would have ceased working for the Engaging Entity, but for any period of garden leave or payment in lieu of notice, whichever is the later; or

9.2.2.4.2 non commencement of the Engagement within 7 days of the intended start date for such Engagement,

("Relevant Notice"); and

9.2.2.5 the Engagement was for a minimum period of more than [12] weeks.

9.2.3 If subsequent to the Client receiving a Refund under clause 9.2.2, the Temporary Worker is Engaged within a period of [insert] weeks from the date of the Relevant Notice then the full amount of the Refund shall be repaid to the Employment Business. The Client shall not be entitled to any further refunds in relation to the Engagement of such Temporary Worker.

9.2.4 Any Refund due to the Client pursuant to clause 9.2.2 shall be payable by the Employment Business no later than [3] months after the date of receipt of the Relevant Notice by the Employment Business.

9.3 The Charges shall, unless stated to the contrary, be exclusive of any applicable VAT.

9.4 The Employment Business shall charge VAT (where applicable) to the Client, at the prevailing rate, which shall be detailed within a VAT invoice.

10 TERMINATION

10.1 The Client may terminate any Assignment:

10.1.1 by providing the Employment Business with no less than [insert number of weeks]'s notice in writing; or

10.1.2 immediately where, in respect of such Assignment, the Temporary Worker commits a material breach of its obligation to provide the Assignment Services (which if capable of remedy, is not remedied within 14 days of notice from the Client) which shall include where the Temporary Worker's performance of the Assignment Services is, in the reasonable opinion of the Client, unsatisfactory.

10.2 If the Client, acting reasonably determines that a Temporary Worker is unsatisfactory to perform the Assignment Services, having at all times complied with its obligations under this agreement, the Client shall be entitled to notify the Employment Business in writing of that fact giving the full grounds for its dissatisfaction. The Client shall give the Employment Business such co-operation and support as the Employment Business may reasonably request including the production of any relevant documents and witness statements at the Client's expense in any internal disciplinary proceedings, employment tribunal proceedings or other legal proceeding in relation to any such Temporary Worker's performance or conduct.

10.3 The Employment Business may terminate any Assignment:

10.3.1 by providing the Client with no less than [insert number of weeks]'s notice in writing; or

- 10.3.2 immediately where: (i) the Client commits a material breach of its obligations under this agreement; (ii) the Client suffers an Insolvency Event; or (iii) the Employment Business is no longer able to source the Assignment Services from the Temporary Worker.
- 10.4 Any termination of an Assignment shall not affect the continuance of this agreement or any other Assignment.
- 10.5 Either party may terminate this agreement:
- 10.5.1 at any time by providing the other with [30] Business Days' prior written notice. The notice period shall expire no earlier than [one] year after the Commencement Date;
- 10.5.2 immediately on giving notice in writing to the other if: (i) the other commits a material breach of this agreement (which if capable of remedy, is not remedied within 14 days of notice from the party not in breach); or (ii) the other suffers an Insolvency Event.
- 10.6 The Client acknowledges that the performance of the Assignment Services is outside of the Employment Business' control and as such, whilst a material breach in the performance of any Assignment Services shall give rise to a right to terminate the applicable Assignment Services pursuant to clause 10.1.2, such breach shall not constitute a material breach for the purposes of clause 10.5.2.
- 10.7 Any termination of this agreement however caused shall not affect: (i) any rights or liabilities which have accrued before the time of termination; (ii) the continuance in force of any provision of this agreement which expressly or by implication is intended to come into or continue in force after termination.
- 10.8 Any termination of this agreement pursuant to clause 10.5.1 shall not affect any Assignment Services then being performed (unless such Assignment is terminated pursuant to clauses 10.1 or 10.3) and the terms of this agreement shall continue to apply solely in respect of such Assignment Services until the applicable Assignment is concluded.

11 FORCE MAJEURE

Either party may defer the date for performance of its obligations under this agreement if it is prevented from, or delayed in, carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lockouts or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

12 LIABILITY

- 12.1 Subject to clause 12.3, as the responsibility for determining the suitability of a Temporary Worker to provide any particular Assignment Services rests solely with the Client (or the applicable Group Company) and the Employment Business is essentially simply providing introductions, the Client acknowledges and agrees that:
- 12.1.1 subject to clause 12.2, the Employment Business excludes any and all liability for any Losses arising from:
- 12.1.1.1 any act or omission of the Temporary Worker;
- 12.1.1.2 the failure of the Temporary Worker to provide the Assignment Services throughout the entire period of the Assignment (including resulting from the termination of the applicable Temporary Worker Contract);
- 12.1.1.3 the unsuitability of the Temporary Worker in relation to the Assignment (including the failure of the Temporary Worker to meet the requirements of the Client);
- 12.1.1.4 any negligence, dishonesty, fraud, recklessness or misconduct of the Temporary Worker; and
- 12.1.1.5 any claim that a contract of employment exists between any Temporary Worker and the Client;
- 12.1.2 the Employment Business shall not have any liability for any income tax, national insurance contributions, interest and/or penalties thereon arising in respect of the Temporary Workers for which the Client may be called upon to account to HM Revenue and Customs and the disallowance of any VAT charged in respect of the services as allowable input tax for the Client; and
- 12.1.3 the Employment Business' total liability whether in contract, tort (including negligence), breach of statutory duty, or otherwise is, in any event, limited:

12.1.3.1 in respect of each Assignment, to the value of the Employment Business' Commission for such Assignment; and

12.1.3.2 under this agreement is limited in any 12 month period to [insert figure].

12.2 Where the Client suffers Losses arising from:

12.2.1 any act or omission of the Temporary Worker;

12.2.2 the failure of the Temporary Worker to provide the Assignment Services throughout the entire period of the Assignment in accordance with the terms set out in the Schedule;

12.2.3 the unsuitability of the Temporary Worker in relation to the Assignment (including the failure of the Temporary Worker to meet the requirements of the Client);

12.2.4 any negligence, dishonesty, fraud, recklessness or misconduct of the Temporary Worker; or

12.2.5 any claim that a contract of employment exists between any Temporary Worker and the Client,

at the reasonable request of the Client, the Employment Business shall use its reasonable endeavours to recover the same from the Temporary Worker through the Temporary Worker Contract. Any sums recovered from the Temporary Worker (after the deduction of the reasonable expenses of the Employment Business) shall be the property of the Client. Where the Employment Business' costs cannot be recovered though such a deduction, the Client agrees to reimburse the same upon request from the Employment Business.

12.3 Nothing in this agreement shall limit or exclude the Employment Business' liability for: (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; (ii) fraud or fraudulent misrepresentation; or (iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

12.4 Except as set out in this agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded.

12.5 The Client hereby indemnifies the Employment Business and keeps the Employment Business indemnified from and against any Losses arising from any breach by the Client of: (i) clause 4.6; and (ii) clause 14.

12.6 The Client acknowledges that the limitations and exclusions of the obligations and liabilities of the Employment Business set out in this Agreement are reasonable and are reflected in the fees payable to the Employment Business under this Agreement and shall accept risk or insure accordingly.

13 CONFIDENTIALITY

13.1 A party ("**Receiving Party**") shall keep in strict confidence all personnel information (including the details of an Introduction), know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its (or a Group Company's) employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under this agreement, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

13.2 The restriction in clause 8.1 does not apply to

13.2.1 any use or disclosure authorised by the Client or the Employment Business or as required by law;

13.2.2 any information which is already in, or comes into, the public domain otherwise than through the Temporary Worker's unauthorised disclosure; or

13.2.3 the making of a protected disclosure within the meaning of section 43A of the Employment Rights Act 1996.

14 DATA PROTECTION COMPLIANCE

To the extent that any data or information belonging to a party ("**Controller**") is personal data within the meaning of the Data Protection Act 1998 or equivalent legislation in the territory: (i) the other party will process such data and information only in accordance with the Controller's instructions; (ii) the other party will not transmit such data and information to a country or territory outside the European Economic Area without the Controller's prior express written consent; and (iii) the other party will take such technical and organisational measures against unauthorised or unlawful processing of such data

and information and against accidental loss or destruction of, or damage to, such data and information as are appropriate to the Controller as data controller.

15 NON-SOLICITATION

The parties agree that neither of them will either on their own account or in partnership or association with any person, firm, company or organisation, or otherwise and whether directly or indirectly during, or for a period of [6] months from, the end of the term of this agreement, solicit or entice away or attempt to entice away or authorise the taking of such action by any other person, any key executive of the other party who has worked on the services provided under this agreement at any time during the term of this agreement.

16 NOTICES

16.1 Any notice or other communication required to be given to a party under or in connection with this agreement shall be in writing, addressed to the [Managing Director] of the other party and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number [, or sent by email to the other party's email address set out in [].

16.2 Any notice or other communication shall be deemed to have been duly received if: (i) delivered personally, when left at such addressor; (ii) if sent by prepaid first-class post or recorded delivery, at [9.00 am] on the [2nd] Business Day after posting; (iii) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed unless outside of business working hours, in which case at [9.00 am] on the next Business Day; (iv) if sent by fax, at [9.00 am] on the next Business Day after transmission, provided a valid transmission receipt has been received; and (v) if sent by email, at [9.00 am] on the next Business Day, provided a valid delivery confirmation has been received].

16.3 This clause 16 shall not apply to the service of any proceedings or other documents in any legal action. [For the purposes of this condition, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.]

17 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

17.1 Where an Assignment relates to a Group Company, the Client shall be responsible for ensuring such Group Company's compliance with the applicable obligations under this agreement. An obligation on a Group Company shall constitute an obligation of the Client and as such, any failure of a Group Company to comply with any such obligation shall constitute a breach of this agreement by the Client.

17.2 The Client acknowledges that, whilst Group Companies may receive the benefit of the Introductory Services under this agreement, this agreement is a direct relationship between the Client and the Employment Business and a person who is not a party to this agreement (including any Group Company) shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

17.3 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement is not subject to the consent of any person that is not a party to this agreement.

18 SEVERANCE

18.1 If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.

18.2 If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

19 ENTIRE AGREEMENT

19.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

19.2 Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this agreement (whether made innocently or negligently) shall be for breach of contract.

19.3 No variation of this agreement shall be effective unless it is in writing and signed by each of the parties (or their authorised representatives).

20 GOVERNING LAW AND JURISDICTION

- 20.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 20.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including any non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

SCHEDULE TEMPORARY WORKER CONTRACT TERMS

ADDITIONAL DEFINITIONS

“Applicable Law” means the laws of Scotland, England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Assignment Services.

“Client Property” means all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the business affairs of the Client or its customers/business contacts, and any equipment, keys, hardware or software provided for use by the Temporary Worker by the Client during the Assignment, and any data or documents (including copies) produced, maintained or stored by the Temporary Worker on the information technology systems (including computer and mobile hardware and software) of the Client, the Temporary Worker during the Assignment.

1 ASSIGNMENT SERVICES

- 1.1 The Temporary Worker shall:
- 1.1.1 perform the Assignment Services using reasonable care and skill and in accordance with generally recognised commercial practices and standards and use its best endeavours to promote the interests of the Client;
 - 1.1.2 ensure that the Assignment Services conform with all descriptions and specifications provided to the Temporary Worker (including those set out in the Assignment Confirmation Note);
 - 1.1.3 comply at all times with all Applicable Law and ensure that the Assignment Services are provided in compliance with all Applicable Law;
 - 1.1.4 co-operate with the Client’s reasonable instructions relating to the performance of the Assignment Services and accept the direction, supervision and control of any responsible person in the Client’s organisation;
 - 1.1.5 observe any relevant rules and regulations (including normal hours of work) and policies (including as applicable those on anti-bribery, social media, use of information and communication systems, anti-harassment and bullying, no smoking, dress code and substance misuse) of the Client’s organisation of which the Temporary Worker has been informed or of which it should reasonably be aware;
 - 1.1.6 co-operate with the Employment Business in the completion and renewal of any and all checks which the Employment Business wishes (or is required) to undertake, including those relating to the right for the Temporary Worker to provide the Assignment Services in the United Kingdom;
 - 1.1.7 take reasonable steps to safeguard the health and safety of any person who may be present or may be affected by the actions of the Temporary Worker during the performance of the Assignment Services (and shall at all times comply with the Client’s health and safety policies);
 - 1.1.8 provide the Employment Business with any progress reports as may be requested from time to time; and
 - 1.1.9 not engage in any conduct which might be detrimental to the interests of the Employment Business and/or the Client.
- 1.2 The Temporary Worker shall ensure that any information technology equipment (including computer/mobile hardware and software) that it uses for the purposes of performing the Assignment Services contains appropriate anti-virus protection in accordance with good industry practice.

2 INTELLECTUAL PROPERTY

- 2.1 The Temporary Worker acknowledges that all Intellectual Property Rights deriving from the performance of the Assignment Services shall belong to the Client. The Temporary Worker hereby assigns by way of future assignment any and all such Intellectual Property Rights to the Client.
- 2.2 The Temporary Worker shall execute all such documents and do all such acts as the Employment Business (or the Client) shall from time to time require at its own cost in order to give effect to the provisions of this paragraph 2.

3 INSURANCE AND LIABILITY

- 3.1 The Temporary Worker shall indemnify the Employment Business and the Client and keep the Employment Business and the Client indemnified from and against:
 - 3.1.1 any income tax, National Insurance contributions, social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Assignment Services or any payment or benefit received by the Temporary Worker in respect of the Assignment Services, where such recovery is not prohibited by law (together with any Losses arising from the same);
 - 3.1.2 any Losses arising from any employment-related claim or any claim based on worker status brought by the Temporary Worker against the Employment Business and/or the Client arising out of or in connection with the provision of the Assignment Services; and
 - 3.1.3 any Losses arising from any breach by the Temporary Worker of the terms of this agreement, including any negligent or reckless act, omission or default in the provision of the Assignment Services and shall accordingly maintain in force during the Assignment full and comprehensive Insurance Policies.
- 3.2 The Temporary Worker shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to the Employment Business and that the level of cover and other terms of insurance are acceptable to and agreed by the Employment Business.
- 3.3 The Temporary Worker shall on request supply to the Employment Business copies of the Insurance Policies and evidence that the relevant premiums have been paid.
- 3.4 The Temporary Worker shall comply with all terms and conditions of the Insurance Policies at all times. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Temporary Worker is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Temporary Worker shall notify the Employment Business without delay.

4 CONFIDENTIALITY

The Temporary Worker shall keep in strict confidence all personnel information, know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Temporary Worker by the Client, its employees, agents or subcontractors, and any other confidential information concerning the Client's business or its products or its services which the Temporary Worker may obtain.

5 CLIENT PROPERTY

At any stage during the Assignment, the Temporary Worker will promptly on request return to the Client all and any Client Property in its possession.

6 DATA PROTECTION COMPLIANCE

- 6.1 To the extent that any data or information belonging to a party ("Controller") is personal data within the meaning of the Data Protection Act 1998 or equivalent legislation in the territory: (i) the other party will process such data and information only in accordance with the Controller's instructions; (ii) the other party will not transmit such data and information to a country or territory outside the European Economic Area without the Controller's prior express written consent; and (iii) the other party will take such technical and organisational measures against unauthorised or unlawful processing of such data and information and against accidental loss or destruction of, or damage to, such data and information as are appropriate to the Controller as data controller.
- 6.2 The Temporary Worker consents to the Employment Business and each Client holding and processing data relating to him/her for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined in the Data Protection Act 1998) relating to the Temporary Worker including, as appropriate:
 - 6.2.1 information about the physical or mental health or condition of the Temporary Worker in order to monitor sickness absence;

- 6.2.2 the racial or ethnic origin or religious or similar beliefs of the Temporary Worker in order to monitor compliance with equal opportunities legislation; and
 - 6.2.3 information relating to any criminal proceedings in which the Temporary Worker has been involved for insurance purposes and in order to comply with legal requirements and obligations to third parties.
- 6.3 The Temporary Worker consents to:
- 6.3.1 the Employment Business making such information available to each Client, those who provide products or services to each Client such as advisers, regulatory authorities, governmental or quasi governmental organisations and potential purchasers of each Client or any part of its business.
 - 6.3.2 to the transfer of such information to each Client's business contacts outside the European Economic Area in order to further such Client's business interests.
- 6.4 The Temporary Worker shall comply with the Client's data protection policy and relevant obligations under the Data Protection Act 1998 and associated codes of practice when processing personal data relating to any employee, worker, customer, client, supplier or agent of the Client.

7 STATUS

Nothing in this agreement shall prevent the Temporary Worker from being engaged, concerned or having any financial interest in any capacity (whether as agent, consultant, director, employee, owner, partner, shareholder or otherwise) in any other business, trade, profession or occupation during an Assignment provided that:

- 7.1 such activity does not cause a breach of any of the Temporary Worker's obligations under this agreement; and
- 7.2 the Temporary Worker shall give priority to the provision of the Assignment Services to the Client over any other business activities undertaken by it during the course of the Assignment.

SIGNED by)
)
)
 (Print Name)) (Signature)
 for and on behalf of)
[The Temp Agency])

SIGNED by)
)
)
 (Print Name)) (Signature)
 for and on behalf of)
)

Please note that the above documents are legal documents which have been drafted by Irwin Mitchell LLP. We recommend that you seek legal guidance when using these documents in order that you understand the terms upon which you are entering into.