

TERMS OF BUSINESS WITH A CANDIDATE WHEN USING A LIMITED COMPANY

THE PARTIES

- (1) **INSERT LIMITED COMPANY NAME** of **INSERT REGISTERED ADDRESS** (“the Intermediary”)
- (2) Quantum Scholars (registered company no. 04493101) of Solar House, 1-9 Romford Road, London, E15 4LJ (“the Employment Business”)

RECITALS

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

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement the following definitions apply:

“**Assignment**” means the Intermediary Services to be performed by the Temporary Contractor for a period of time during which the Intermediary is supplied by the Employment Business to provide the Intermediary Services to the Hirer;

“**Assignment Details Form**” means written confirmation of the Assignment details set out in clause 6.2;

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

“**AWR Regulation 10 Contract of Employment**” means a permanent contract of employment between the Intermediary and the Temporary Contractor that satisfies the requirements of Regulation 10 of the AWR;

“**Business Day**” a day (other than Saturday, Sunday or a public holiday) when banks in London are open for business;

“**Calendar Week**” means any period of seven days starting with the same day as the first day of the First Assignment;

“**Conduct Regulations**” means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;

“**Confidential Information**” shall mean any and all confidential commercial, financial, marketing, technical or other information or data of whatever nature relating to the Hirer or Employment Business or their business or affairs (including but not limited to this Agreement, data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information concerning the Assignment) in any form or medium whether disclosed or granted access to, whether in writing, orally or by any other means, provided to the Intermediary or any third party in relation to the Assignment by the Hirer or the Employment Business or by a third party on behalf of the Hirer whether before or after the date of this Agreement together with any reproductions of such information in any form or medium or any part(s) of such information;

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

“**Data Protection Laws**” means the Data Protection Act 1998, the General Data Protection Regulation (EU 2016/679) and any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data;

“**Engagement**” means the engagement, (including the Intermediary’s and/or the Temporary Contractor’s acceptance of the Hirer’s offer) employment or use of the Intermediary and/or any Temporary Contractor by the Hirer or by any third party to whom the Intermediary and/or any Temporary Contractor have been introduced by the Hirer, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, an agency, license, franchise or partnership arrangement, or any other engagement, and “Engage”, “Engages” and “Engaged” shall be construed accordingly;

“**First Assignment**” means:

(a) the relevant Assignment; or

(b) if, prior to the relevant Assignment:

(i) the Temporary Contractor has worked in any assignment in the same role with the relevant Hirer as the role in which the Temporary Contractor works in the relevant Assignment; and

the relevant Qualifying Period commenced in any such assignment,

(ii) that assignment (an assignment being (for the purpose of this defined term) a period of time during which the Temporary Contractor is supplied by one or more Temporary Work Agencies to the relevant Hirer;

“**Hirer**” means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Intermediary is supplied or Introduced requiring the Intermediary Services;

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

“**Intermediary Fees**” means the fees payable to the Intermediary for the provision of the Intermediary Services, including the rate of pay which will be paid for each hour worked during an Assignment (to the nearest quarter hour) to

be paid in arrears following submission of an invoice as set out within this Agreement and in the relevant Assignment Details Form;

“**IR35 Legislation**” means Chapter 8 of Part 2 of the ITEPA and the Social Security Contributions (Intermediaries) Regulations 2000;

“**ITEPA**” means the Income Tax (Earnings and Pensions) Act 2003;

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

“**Minimum Rate**” means National Minimum Wage or the National Living Wage being the minimum rate of pay that the Employment Business reasonably expects to achieve, for all hours worked by the Intermediary;

“**MSC Legislation**” means section Chapter 9 of Part 2 of ITEPA;

“**NICs Legislation**” means the Social Security (Categorisations of Earners) Regulations 1978 and the Social Security (Contributions and Benefits) Act 1992;

“**Period of Extended Hire**” means any additional period that the Hirer wishes the Intermediary to be supplied for beyond the duration of the original assignment or series of assignments as an alternative to paying a Transfer Fee;

“**Qualifying Period**” means 12 continuous Calendar Weeks during the whole or part of which the Temporary Contractor is supplied by one or more Temporary Work Agencies to the relevant Hirer and as further defined in the Schedule to this Agreement;

“**Relevant Period**” means whichever ends the later of (a) the period of 8 weeks commencing on the day after the last day on which the Intermediary worked for the Hirer having been supplied by the Employment Business; or (b) the period of 14 weeks commencing on the first day on which the Intermediary worked for the Hirer having been supplied by 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 any basic working and employment conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation;

“**Reporting Requirements**” means the requirements of the Income Tax (Pay as You Earn) (Amendment No.2) Regulations 2015;

“**Specified Intermediary**” means the party required to submit the report to HMRC in compliance with the Reporting Requirements;

“**Temporary Contractor**” means such of the Intermediary’s employees, workers, officers or representatives supplied to provide the Intermediary Services;

“**Temporary Work Agency**” means as defined in the Schedule to this Agreement;

“**Transfer Fee**” means a fee payable by the Hirer to the Employment Business if the Hirer or any third party wishes to Engage the Intermediary, as permitted by Regulation 10 of the Conduct Regulations;

“**Type of Work**” means teaching or such other work as the Employment Business may from time to time consider is of interest to the Intermediary; and

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

1.2. Unless the context requires otherwise references to the singular include the plural and references to the masculine include the feminine and vice versa.

1.3. The headings contained in this Agreement are for convenience only and do not affect their interpretation.

1.4. Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of this Agreement) and all subordinate legislation made (before or after this Agreement) under it from time to time.

2. THE CONTRACT

2.1. This Agreement together with the attached Schedule and any applicable Assignment Details Form (“**Agreement**”) constitutes the entire agreement between the Employment Business and the Intermediary and governs for the supply of the Intermediary Services to the Hirer and shall govern all Assignments undertaken by the Intermediary. However no contract shall exist between the Employment Business and the Intermediary between Assignments. This Agreement shall prevail over any terms put forward by the Intermediary and shall be deemed to be accepted upon acceptance by the Intermediary of an Assignment.

2.2. During an Assignment the Intermediary will be engaged on a contract for services by the Employment Business on the terms set out in this Agreement. For the avoidance of doubt this Agreement shall not be construed as a contract of employment between any Temporary Contractor or any representative of the Intermediary supplied to carry out the Assignment and either the Employment Business or the Hirer, and any of the liabilities of

an employer arising out of the Assignment shall be the liabilities of the Intermediary

2.3. No variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between the Employment Business and the Intermediary and set out in writing and a copy of the varied terms is given to the Intermediary no later than 5 Business Days following the day on which the variation was made stating the date on or after which such varied terms shall apply.

2.4. The Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973) when introducing or supplying the Intermediary for Assignments with its Hirers.

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

3.1. The Employment Business will endeavour to obtain suitable Assignments for the Intermediary performing the agreed Type of Work although the Employment Business offers no guarantee that it will be able to offer the Intermediary any Assignments to perform the agreed Type of Work and offers no guarantee that an opportunity the Employment Business informs the Intermediary and / or Temporary Contractor of will be progressed. The Intermediary shall not be obliged to accept an Assignment offered by the Employment Business.

3.2. The Intermediary acknowledges that the nature of temporary work means that there may be periods when no suitable work is available and agrees that:

3.2.1. suitability of the work to be offered shall be determined solely by the Employment Business;

3.2.2. the Employment Business shall incur no liability to the Intermediary (or an Temporary Contractor);should it fail to offer opportunities to work to the Intermediary

3.2.3. the Employment Business may remove the Intermediary from its database at any time and shall incur no liability for failing to offer Assignments of the Type of Work or any other work as a result;

3.2.4. a Hirer and / or the Employment Business may withdraw an offer of an Assignment at any time before an Assignment

3.3. The Intermediary acknowledges to the Employment Business that its services are supplied to the Employment Business as an independent contractor and that accordingly the responsibility and expense of complying with all statutory and legal requirements relating to the Temporary Contractor (including the matters of taxation and compliance with the immigration laws and Disclosure and Barring Services (“DBS”) checks applicable to the jurisdiction in which the Intermediary Services are provided) shall fall upon and be discharged wholly and exclusively by the Intermediary.

3.4. Once the Intermediary has confirmed it wishes to take the Assignment offered the Employment Business will confirm the Intermediary’s intention for the Temporary Contractor to undertake the Assignment with the Hirer.

3.5. The Employment Business will monitor the Hirer’s requirements for the Intermediary’s services and the Temporary Contractor’s progress during the Assignment. If either the Hirer or the Intermediary requires changes to the way the Assignment is performed, the Employment Business may suggest options for making those changes, including discussing termination in accordance with clause 9.

3.6. If before or during an Assignment or during the Relevant Period the Hirer wishes to Engage the Intermediary or any Temporary Contractor directly or through another employment business, the Intermediary acknowledges that the Employment Business will be entitled either to charge the Hirer a Transfer Fee or to agree to a Period of Extended Hire with the Hirer at the end of which the Intermediary or the Temporary Contractor (as appropriate) may be Engaged directly by the Hirer or through another employment business without further charge to the Hirer. In addition the Employment Business will be entitled to charge a Transfer Fee to the Hirer if the Hirer introduces the Intermediary or any Temporary Contractor to a third party (other than another employment business) who subsequently Engages the Intermediary or any Temporary Contractor before or during an Assignment or within the Relevant Period.

3.7. If the Temporary Contractor has completed the Qualifying Period on the start date of the relevant Assignment or following completion of the Qualifying Period during the relevant Assignment, and if the Temporary Contractor is entitled to any terms and conditions relating to the duration of working time, night work, rest periods and/or rest breaks and/or annual leave under the AWR which are different and preferential to rights and entitlements relating to the same under the Working Time Regulations, any such terms and conditions will be as set out in the relevant Assignment Details Form or any variation to the relevant Assignment Details Form (as appropriate) and the Intermediary will give the Temporary Contractor any such entitlements.

3.8. If the Intermediary and/or the Temporary Contractor considers that the Temporary Contractor has not or may not have received equal treatment under the AWR as a result of any act or omission of the Employment Business, the Intermediary may, or may request the Temporary Contractor to, raise this in writing with the Employment Business setting out as fully as possible the basis of the Intermediary’s and/or the Temporary Contractor’s concerns. The Intermediary and/or the Temporary Contractor are encouraged to initially raise such concerns informally with the Employment Business.

3.9. As a Temporary Work Agency, the Intermediary will notify the Employment Business as soon as possible prior to the commencement of the first Assignment under this Agreement if the Temporary Contractor has an AWR Regulation 10 Contract of Employment and shall provide a copy of that contract (on request from the Employment Business). The Intermediary will also notify the Employment Business immediately if and when any such contract is terminated.

3.10.As a Temporary Work Agency, the Intermediary will comply with the AWR in all relevant respects.

3.11.Save to the extent any Losses result from any act or omission of the Employment Business or the Hirer, the Intermediary shall indemnify and keep indemnified the Employment Business (or, as the case may be, the Hirer) against any Losses the Employment Business (or the Hirer) may suffer or incur as a result of any claim made by or on behalf of the Temporary Contractor under the AWR.

4. WARRANTIES PROVIDED BY THE INTERMEDIARY

4.1. The Intermediary warrants to the Employment Business that:

4.1.1. by entering into and performing its obligations under this Agreement it will not thereby be in breach of any obligation which it owes to any third party;

4.1.2. it has carried out all necessary employment checks on the Temporary Contractor as required by law and relevant to providing the Type of Work including but not limited to the Temporary Contractor's right to work within the UK without restriction and DBS checks. Having undertaken such checks, the Intermediary warrants that the Temporary Contractor:

4.1.2.1. has the necessary skills and qualifications to provide the Intermediary Services without restrictions;

4.1.2.2. has not been convicted of or cautioned in relation to any criminal offence. In the event that the Temporary Contractor is charged with or cautioned in relation to any criminal offence (including any motoring offence), the Intermediary must inform the Employment Business immediately and provide regular reports about the progress of the proceedings;

4.1.2.3. is entitled to work in the United Kingdom without any additional approvals;

4.1.3. that the Intermediary and the Temporary Contractor providing the Intermediary Services have not opted out of the Conduct Regulations and that the Intermediary will only supply Temporary Contractors to perform the Intermediary Services who have not opted out of the Conduct Regulations;

4.1.4. the Intermediary is not a 'managed service company' as defined in section 61B of the ITEPA but that it is a company which is compliant in all respects with the IR35 Legislation, MSC Legislation and ITEPA;

4.1.5. that all information provided to the Employment Business in accordance with this clause 4.1 is true and accurate and the Intermediary will notify the Employment Business promptly if there are any changes to the warranties given in this clause 4.1;

4.1.6. the remuneration receivable by the Temporary Contractor in consequence of providing his/her services constitutes employment income of the Temporary Contractor apart from Chapter 7 ITEPA;

4.1.7. The Intermediary will comply at all times with ITEPA and the NICs Legislation including in particular in relation to the deduction of the appropriate PAYE and national insurance deductions and payment of the appropriate employers' national insurance contributions;

4.1.8. the Intermediary is incorporated in the UK and all directors are resident in the UK for tax purposes;

4.1.9. the Intermediary will pay the Temporary Contractor into a nominated UK bank account in the individual's name;

4.1.10. all information the Intermediary provides to the Employment Business in order to comply with the Reporting Requirements and clauses 5.2.23 to 5.2.29 inclusive is complete and accurate; and

4.1.11. the Intermediary and the Temporary Contractor will comply with the Data Protection Laws.

4.2. In the event that the Intermediary requires the Employment Business to undertake any employment checks, the Intermediary will notify the Employment Business of the same and will be responsible for the associated costs which the Intermediary agrees can, in the discretion of the Employment Business, be deducted from any Intermediary Fees payable or invoiced to the Intermediary.

4.3. The Intermediary shall procure that the Temporary Contractor, any sub-contractor or assignee providing the Intermediary Services warrant that they are not and do not operate as 'managed service companies' as defined in section 61B of the ITEPA but that they are

company which are compliant in all respects with the IR35 Legislation or where applicable section 44 of the ITEPA.

4.4 The Intermediary does not engage the Temporary Contractor on a self-employed basis.

5. THE INTERMEDIARY'S OBLIGATIONS

5.1. In consideration of the Employment Business registering the Intermediary, the Intermediary will:

5.1.1. provide the Employment Business with full and accurate information relating the Temporary Contractor's skills and experience including a personal curriculum vitae, proper evidence of the Temporary Contractor's entitlement to work in the United Kingdom and evidence of any qualifications or certificates;

5.1.2. provide the Employment Business with any information reasonably requested relevant to the decision of a Hirer to engage the Intermediary/Temporary Contractor including but not limited to information concerning the Temporary Contractor's experience, qualifications, medical history, criminal record (including, where the Type of Work relates to a profession listed within the Exceptions Order to the Rehabilitation of Offenders Act 1974, both spent and unspent convictions) cautions, reprimands and warnings, save where the spent conviction or caution is protected under the Exceptions Order 1975 (2013)) and fitness to work in the Type of Work;

5.1.3. if requested, arrange for the Temporary Contractor to attend an interview with the Hirer prior to the commencement of an Assignment to ascertain the Temporary Contractor's suitability for the Assignment;

5.1.4. provide the Employment Business with the names and contact details of suitable referees for the Temporary Contractor upon request who are not relatives as defined in the Conduct Regulations; and

5.1.5. advise the Employment Business if the Intermediary and / or the Temporary Contractor requires their details to be removed from the Employment Business' database;

5.1.6. notify the Employment Business promptly if they intend to accept or reject an offer of an Assignment;

5.1.7. notify the Employment Business promptly if the Intermediary and / or Temporary Contractor receives any offer of Engagement.

5.2. The Intermediary agrees on its own part and on behalf of the Temporary Contractor if it accepts any Assignment offered by the Employment Business:

5.2.1. to act in good faith towards the Hirer and the Employment Business and carry out the services professionally, promptly and efficiently;

5.2.2. to co-operate with the Hirer's reasonable instructions of any responsible person in the Hirer's organisation within the scope of the Assignment;

5.2.3. to observe any relevant rules and regulations of the Hirer's establishment or the premises where the Intermediary Services are being performed to which attention has been drawn or which the Intermediary might reasonably be expected to ascertain; including but not limited to those relating to health and safety to the extent that they are reasonably applicable to the Intermediary and the Temporary Contractor;

5.2.4. to take all reasonable steps to safeguard its own safety, the safety of the Temporary Contractor and the safety of any other person who may be affected by the actions of the Temporary Contractor whilst on the Assignment;

5.2.5. to provide any equipment necessary to undertake the Intermediary Services;

5.2.6. to comply with the Data Protection Laws in respect of any personal data which the Intermediary is granted access to for the purpose of or by reason of the performance of the Intermediary Services;

5.2.7. not at any time to divulge to any person, nor use for its own or any other person's benefit, any Confidential Information relating to the Hirer's or the Employment Business' employees, business affairs, transactions or finances;

5.2.8. immediately report to the Employment Business in writing any deficiency which precludes the Intermediary and/or Temporary Contractor from carrying out the Assignment (including but not limited to Health and Safety deficiencies) on the part of the Hirer;

5.2.9. undertake all tasks reasonably connected to the Type of Work;

5.2.10. notify the Hirer, as a matter of courtesy, if the Temporary Contractor needs to be absent at any time;

5.2.11. provide 14 Business Days' written notice prior to the relevant leave period if the Temporary Contractor wishes to take annual leave. The Intermediary will only permit the Temporary Contractor to take annual leave at times agreed with the Employment Business and subject to the needs of the Hirer. The Intermediary agrees that the Temporary Contractor will not take annual leave inside the published dates of the school terms of the Hirer. The Intermediary acknowledges that the Employment Business may suspend the Intermediary Services or require a replacement Temporary Contractor during such periods of annual leave;

5.2.12. notify the Employment Business promptly if the Intermediary and / or Temporary Contractor considers that the Assignment is not suitable for them;

5.2.13. not to engage in any conduct detrimental to the interests of the Employment Business and/or the Hirer which includes any conduct which could bring the Employment Business and/or the Hirer into disrepute and/or which results in the loss of custom or business by either the Employment Business or the Hirer;

5.2.14. not to commit any act or omission constituting unlawful discrimination against or harassment of any member of the Employment Business' or the Hirer's staff;

5.2.15. not import any software onto the computer systems of the Hirer or use any email or internet systems except where authorised by the Hirer and with due care and attention in accordance with the Hirer's internal policies and procedures;

5.2.16. not use any facilities of the Hirer other than for the purposes duly authorised;

5.2.17. not provide services to another party which conflict with the Type of Work being provided to the Hirer;

5.2.18. not to sub-contract or assign to any third party any of the Intermediary Services which it is required to perform under any Assignment;

5.2.19. to furnish the Hirer and/or the Employment Business with any progress reports as may be requested from time to time;

5.2.20. to notify the Employment Business forthwith in writing if it should become insolvent, or if any of the arrangements set out in clauses 9.2.6 to 9.2.8 apply;

5.2.21. to comply with all the requirements of VAT legislation and the Companies Acts;

5.2.22. to provide confirmation that the remuneration receivable by the Temporary

Contractor in consequence of providing his/her services constitutes employment income of the Temporary Contractor apart from Chapter 7 ITEPA

5.2.23. to confirm in writing whether or not the Temporary Contractor has a material interest (as defined in section 51 ITEPA) in the Intermediary. A "material interest" includes holding more than 5% of the shares of the Intermediary;

5.2.24. to comply with all relevant legal obligations, including but not limited to ITEPA, the NICs Legislation and all statutory obligations;

5.2.25. to provide the Employment Business with all such information it may require to comply with (a) the Reporting Requirements where it is the Specified Intermediary or (b) any contractual obligations the Employment Business has to provide information to the Specified Intermediary (where it is a party other than the Employment Business) to enable the Specified Intermediary to comply with its Reporting Requirements;

5.2.26. to notify the Employment Business promptly in writing immediately if it becomes subject to a HMRC investigation or compliance activity including but not limited to any of ITEPA, the NICs Legislation or VAT Legislation;

5.2.27. to provide the Employment Business with a copy of the terms under which the Intermediary has engaged the Temporary Contractor;

5.2.28. to provide the Employment Business on request, with any information required to comply with Transparency Regulations 2015;

5.2.29. to update the Employment Business promptly where any of the information required clauses 5. 2.23 to 5.2.28 inclusive of changes.

5.3. As soon as possible prior to the commencement of each Assignment and during each Assignment (as appropriate) and at any time at the Employment Business' request, the Intermediary undertakes to:

5.3.1. inform the Employment Business of any Calendar Weeks in the 24 months immediately preceding the start of the relevant Assignment and/or during the relevant Assignment in which the Temporary Contractor has worked in the same or a similar role with the relevant Hirer via any third party and which the Intermediary and/or the Temporary Contractor believes count or may count toward the Qualifying Period; and

5.3.2. provide the Employment Business with all the details of such work, including (without limitation) details of where, when and the period(s) during which such work was undertaken and any other details requested by the Employment Business; and

5.3.3. inform the Employment Business if, in the 24 months immediately preceding the start of the relevant Assignment, the Temporary Contractor has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment:

5.3.3.1. completed two or more assignments with the Hirer;

5.3.3.2. completed at least one assignment with the Hirer and one or more earlier assignments with any member of the Hirer's Group; and/or

5.3.3.3. worked in more than two roles during an assignment with the Hirer and on at least two occasions worked in a role that was not the same role as the previous role.

5.4. If the Temporary Contractor is unable for any reason to provide the Intermediary Services during the course of an Assignment, the Intermediary should inform the Employment Business as soon as possible, but in any event no later than 1 hour after the commencement of Quantum Scholars Ltd Co Terms (Comparator) v7 May 2018

the Assignment or shift. In the event that it is not possible to inform the Employment Business within these timescales, the Intermediary should alternatively inform the Hirer and then the Employment Business as soon as possible.

5.5. If, either before or during the course of an Assignment, the Intermediary becomes aware of any reason why it or the Temporary Contractor supplied to perform the Intermediary Services may not be suitable for an Assignment, the Intermediary shall notify the Employment Business without delay.

5.6. The Intermediary acknowledges that any breach of its obligations set out in clause 4 (Warranties provided by the Intermediary) and this clause may cause the Employment Business to suffer Losses and that the Employment Business reserves the right to recover such Losses from the Intermediary.

5.7. As an independent contractor, the Intermediary is responsible for the provision of services and will undertake to review any applicable supervision, direction or control in practice (or any right of) which may be in place in respect of its employees as to the manner in which they provide the services on behalf of the Intermediary. The Intermediary will confirm their position in respect of each Assignment it undertakes upon request.

6. THE EMPLOYMENT BUSINESS'S OBLIGATIONS

6.1. Throughout the term of this Agreement the Employment Business will pay the Intermediary the Intermediary Fees in accordance with clause 8 below in respect of the provision of the Intermediary Services.

6.2. At the same time as an Assignment is offered to the Intermediary the Employment Business shall provide the Intermediary with an Assignment Details Form setting out the following:

6.2.1. the identity of the Hirer, and if applicable the nature of their business;

6.2.2. the date the Assignment is to commence and the duration or likely duration of the Assignment;

6.2.3. the Type of Work, location and hours during which the Intermediary would be required to provide the Intermediary Services;

6.2.4. the Minimum Rate and any expenses payable by or to the Intermediary;

6.2.5. any risks to health and safety known to the Hirer in relation to the Assignment and the steps the Hirer has taken to prevent or control such risks; and

6.2.6. what experience, training, qualifications and any authorisation required by law or a professional body the Hirer considers necessary or which are required by law to work in the Assignment.

6.3. 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 following save where:

6.3.1. the Intermediary is being offered an Assignment in the same position as one in which the Intermediary had previously been supplied within the previous 5 Business Days and such information has already been given to the Intermediary; or

6.3.2. subject to clause 6.4, the Assignment is intended to last for 5 consecutive Business Days or less and such information has previously been given to the Intermediary and remains unchanged, the Employment Business needs only to provide written confirmation of the identity of the Hirer and the likely duration of the Assignment.

6.4. Where the provisions of clause 6.3.2 are met but the Assignment extends beyond the

intended 5 consecutive Business Day period, the Employment Business shall provide such information set out in clause 6.2 to the Intermediary in paper or electronic form within 8 days of the start of the Assignment.

6.5. The Employment Business will endeavour to obtain accurate information from the Hirer but accepts no liability for any inaccuracies in the information provided to it by the Hirer or any representation made by the Hirer to the Temporary Contractor and / or the Intermediary.

7. TIMESHEETS AND INVOICING

7.1. At the end of each week of an Assignment (or at the end of the Assignment where an Assignment is for a period of less than 1 week or is completed before the end of a week) the Intermediary shall deliver to the Employment Business the Employment Business' timesheet duly completed to indicate the number of hours worked by the Intermediary during the preceding week signed by an authorised representative of the Hirer. The timesheet must be accompanied by an invoice from the Intermediary for the amount due from the Employment Business to the Intermediary for the hours worked in that week. Such invoice should bear the Intermediary's name, the name of the Temporary Contractor who provided the Intermediary Services, the Intermediary's company registration number and VAT number, and should state any VAT due on the invoiced sum. The Intermediary shall also provide on a monthly basis a copy of the Temporary Contractor payslip (providing a minimum of 2 payslips per month) for the services provided through the Intermediary. Failure to provide such payslips will result in termination of this Agreement.

7.2. Subject to the Intermediary complying with the provisions of this clause 7 the Employment Business shall pay the Intermediary for all hours worked regardless of whether the Employment Business has received payment from the Hirer for those hours.

7.3. In order to ensure prompt payment, the Employment Business should receive the signed timesheet no later than 4.00pm on Monday following the week to which it relates. Where the Intermediary fails to submit a properly authenticated timesheet the Employment Business shall, in a timely fashion, conduct further investigations into the hours claimed by the Temporary Contractor and the reasons, if any, that the Hirer has refused to sign a timesheet in respect of those hours. This may delay any payment due to the Intermediary.

8. INTERMEDIARY FEES

8.1. Subject to the receipt of the Intermediary's invoice and signed timesheet in accordance with clause 7 above, and the Intermediary's compliance with this Agreement, the Employment Business will pay the Intermediary Fees within 7 days of receipt of the Intermediary's invoice. The Employment Business shall pay to the Intermediary the Intermediary Fees which shall be notified on a per Assignment basis.

8.2. The Employment Business may make deductions from the Intermediary Fees before making payment to the Intermediary in respect of any sums owed by the Intermediary to the Employment Business relating to:

8.2.1. Services provided to the Intermediary by the Employment Business where the parties have agreed such deduction may be made;

8.2.2. Losses suffered by the Employment Business for which the Intermediary is liable;

8.2.3. Recouping overpayments made to the Intermediary by the Employment Business.

Such deduction shall not be a withholding of payment due but shall be a lawful deduction on

account of monies due from the Intermediary to the Employment Business.

8.3. Subject to clause 8.10, if and when the Temporary Contractor:

8.3.1. completes the Qualifying Period, the Employment Business reserves the right to vary the Intermediary Fees if there is any variation the Relevant Terms and Conditions; or

Any such variation will be as set out in a variation to the relevant Assignment Details Form and the Intermediary shall ensure that, if at any time the Employment Business varies the Intermediary Fees in accordance with this clause 8.3, the Intermediary will, at the same time, make the same variations to the corresponding payments the Intermediary makes to the Temporary Contractor.

8.4. Under the AWR, on completion of the Qualifying Period the Temporary Contractor may be entitled to paid annual leave (save where the Intermediary is a Temporary Work Agency and it is agreed in the relevant Assignment Details Form that the Temporary Contractor is employed on a Regulation 10 Contract of Employment) and/or unpaid annual leave in addition to the Temporary Contractor's entitlement to paid annual leave under the Working Time Regulations provided by the Intermediary. If this is the case, any such entitlement(s), the date from which any such entitlement(s) will commence and how any payment for such entitlement accrues in respect of the relevant Assignment will be as set out in the relevant Assignment Details Form or any variation to the relevant Assignment Details Form and the Intermediary will pass this information on to the Temporary Contractor and, if the Intermediary receives any such payment(s) for leave from the Employment Business, the Intermediary will make the same payment(s) to the Temporary Contractor.

8.5. Subject to clause 8.10, on completion of the Qualifying Period during the relevant Assignment, the Temporary Contractor may be entitled to receive a bonus. The Intermediary will, and will procure that the Temporary Contractor will, comply with any requirements of the Employment Business and/or the Hirer relating to the assessment of the Temporary Contractor's performance for the purpose of determining whether or not the Temporary Contractor is entitled to a bonus and the amount of any such bonus. If, subject to satisfying the relevant criteria, is entitled to receive a bonus, the Employment Business will pay the bonus to the Intermediary and the Intermediary will pay the bonus to the Temporary Contractor.

8.6. The Intermediary shall be responsible for the deduction of any PAYE Income Tax and National Insurance Contributions and any other taxes and deductions payable in respect of any earnings paid to the Temporary Contractor for any Assignment any Assignment including any social fund contributions payable in any other Member State pursuant to a valid A1, Temporary Contractor E101 or E102 Certificate issued to any Temporary Worker.

8.7. All payments due from the Employment Business will be made to the Intermediary and not to any third party or the Temporary Contractor.

8.8. The Employment Business shall not be obliged to pay the Intermediary for any periods during which the Intermediary Services are not provided, whether this is due to the Intermediary being unable to provide the Intermediary Services or where the Hirer does not require the Intermediary Services or otherwise in respect of annual leave (save as where may be the case in accordance with clause 8.4), illness or absence of the Temporary Contractor.

8.9. The Employment Business will pay the Intermediary Fees into a UK business bank account only.

8.10. The Intermediary shall bear the cost of any training which the Temporary Contractor may require in order to perform the Intermediary Services.

8.11. Clauses 8.3 and 8.5 will not apply where the Temporary Contractor is employed on an AWR Regulation 10 Contract of Employment.

9. TERM AND TERMINATION

9.1. Either of the Employment Business or the Intermediary may terminate the Assignment in writing at any time without prior notice or liability. The Employment Business is under no obligation to give the Intermediary or Temporary Contractor reasons for the termination.

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

9.2.1. the Intermediary or the Hirer are, in the opinion of the Employment Business, unable or unwilling to perform their obligations to the Employment Business;

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

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

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

9.2.5. the Hirer is dissatisfied with the Intermediary's or the Temporary Contractor's provision of the Intermediary Services and has terminated the Assignment; or

9.2.6. either the Hirer or the Intermediary is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; or

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

9.2.8. an order is made for the winding up of the Hirer or the Intermediary, or where the Hirer or the Intermediary passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation or amalgamation where the resulting entity will assume all the obligations of the other party under this Agreement); or

9.2.9. the Intermediary or the Temporary Contractor is suspected of any fraud, dishonesty or serious misconduct; or

9.2.10. the Intermediary or the Temporary Contractor is unable to perform the Intermediary Services for 3 days or more;

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

9.2.12. the Intermediary fails to comply with clause 13.3; or

9.2.13. the Intermediary fails to provide the relevant payslips as outlined in clause 7.1; or

9.2.14. the Employment Business knows or suspects that either the Intermediary or the Temporary Contractor has breached the Data Protection Laws.

9.3. The Intermediary acknowledges that the continuation of an Assignment is subject to and conditioned by the continuation of the contract entered into between the Employment Business and the Hirer. In the event that the contract between the Employment Business and the Hirer is not completed or is terminated for any reason or in the event that the Employment Business concludes that the Hirer is not meeting its obligations to the Intermediary and / or the Employment Business the Assignment shall cease with immediate effect without liability to the Intermediary. Failure by the Intermediary to give notice of termination as required in the Assignment Details Form shall constitute a breach of contract and shall entitle the Employment Business to claim damages from the Intermediary for any resulting Losses suffered by the Employment Business.

9.3. If the Intermediary considers the Employment Business is in material breach of this Agreement the Intermediary will notify the Employment Business immediately in writing and will give the Employment Business 14 Business Days to remedy the breach. If the breach is not remedied the Intermediary may terminate the Assignment with immediate effect.

9.4. If the Assignment is terminated as a result of the negligence of the Intermediary or Temporary Contractor, the Intermediary acknowledges that notwithstanding the termination of the Assignment they may remain liable for any loss or damage caused to the Hirer or any third party as applicable as a result of their act or omission.

9.5. An Assignment can be suspended at any time by the Employment Business giving the Intermediary notice of the suspension.

10. INTELLECTUAL PROPERTY RIGHTS

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

11. CONFIDENTIALITY

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

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

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

11.1.3. not at any time to make any copy, abstract, summary or précis of the whole or any part of any document or other material belonging to the Hirer except when required to do so in the course of its duties under an

Assignment in which event any such item shall belong to the Hirer or the Employment Business as appropriate.

12. COMPUTER EQUIPMENT WARRANTY

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

13. CONTRACT MONITORING AND AUDITS

13.1. The Employment Business reserves the right to audit the Intermediary on an ad hoc basis to ensure compliance with this Agreement and all statutory requirements in relation to all Temporary Contractors supplied to provide the Intermediary Services including in particular but not limited to ITEPA and the NICs Legislation.

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

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

13.2.2. provide the Employment Business with access to its premises and original records relating to all Temporary Contractors supplied to provide the Intermediary Services.

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

14. LIABILITY

14.1. The Intermediary shall:

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

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

14.2. Save to the extent any Losses result from any act or omission of the Employment Business or the Hirer, the Intermediary shall

indemnify and keep indemnified the Employment Business (or, as the case may be, the Hirer) against any Losses the Employment Business (or the Hirer) may suffer or incur as a result of any claim made by or on behalf of the Temporary Contractor under the AWR.

14.3. The Employment Business shall not be liable for any loss claimed by the Intermediary and/or the Temporary Contractor other than in respect of the Employment Business', its agents' or employees' breach of contract, negligence or as provided by statute or where such liability is expressly provided by law. The Employment Business does not exclude any liability in respect of death or personal injury caused by its own, its agents' or employees' negligence, liability for fraud or any other liability which cannot be excluded or limited by law.

14.4. Nothing in this Agreement shall render any Temporary Contractor an employee or worker of either the Employment Business or the Hirer. The Intermediary shall ensure that the Temporary Contractor does not hold him/herself out as an employee or worker of either the Employment Business or the Hirer. In the event that any person should seek to establish any liability or obligation upon the Employment Business on the grounds that the Temporary Contractor is an employee/employees or worker/workers of the Employment Business or the Hirer, the Intermediary shall upon demand indemnify the Employment Business and keep it indemnified in respect of any such liability or obligation and any related Losses which the Employment Business or Hirer shall incur.

14.5. The parties agree that the Employment Business is not liable for any loss or damages:

14.5.1. arising out of any representation made by the Hirer to the Intermediary and / or the Temporary Contractor;

14.5.2. arising out of any act or omission, tort (including negligence), breach of statute or breach of contract by the Hirer;

14.5.3. if no work is found for the Intermediary or the work found is not suitable;

14.5.4. for any failure by the Employment Business to provide any information or service save to the extent strictly required by law or this Agreement;

14.5.5. for any failure of the Intermediary in its obligations to the Temporary Contractor as its employer;

14.6. Without prejudice to the other provisions within this Agreement the Employment Business' liability, save for monies due for work done, shall be limited to direct loss only and shall not exceed £10,000 save where a limit is precluded by law.

15. INDEMNITY

The Intermediary shall indemnify and keep indemnified the Employment Business against any Losses suffered or incurred by the

Employment Business by reason of any proceedings, claims or demands by the Temporary Contractor, the Hirer or any third party (including specifically, but without limitation, Her Majesty's Revenue and Customs (HMRC) and any successor, equivalent or related body pursuant to the IR35 Legislation, section 44 of the Income Tax (Earnings and Pensions) Act 2003 and/or any of the provisions of Chapter 9 and/or section 688A of the Income Tax (Earnings and Pensions) Act 2003 and/or any supporting or consequential secondary legislation relating thereto) arising out of or connected to the provision of the Intermediary Services, breach of this Agreement, the Data Protection Laws, or the tort or negligence of the Intermediary and / or the Temporary Contractor.

16. SEVERABILITY

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

17. NOTICES

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

18. RIGHTS OF THIRD PARTIES

18.1. Save as set out in clause 18.2, none of the provisions of this Agreement is intended to be for the benefit of or enforceable by third parties and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

18.2. The Hirer shall be entitled to rely on and enforce the indemnities in clause 3.11 given by the Intermediary in favour of the Hirer, notwithstanding that the Hirer is not a party to this Agreement.

18.3. The Employment Business may assign its rights and obligations under this Agreement but the intermediary and / or Temporary Contractor may not do so without the Employment Business' prior written consent

19. GOVERNING LAW AND JURISDICTION

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

SCHEDULE: "QUALIFYING PERIOD" AND "TEMPORARY WORK AGENCY"

For the purpose of the definition of "Qualifying Period" in clause 1.1 of this Agreement, when calculating whether any weeks completed with the Hirer count as continuous towards the Qualifying Period, where:

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

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

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.