

## TERMS OF BUSINESS FOR THE SUPPLY OF CONTRACT / TEMPORARY WORKERS

### 1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms the following definitions apply:

<b>“Agency Workers Regulations”</b>	means the Agency Workers Regulations 2010;
<b>“Assignment”</b>	means the period during which the Consultancy is supplied by the Employment Business to provide services to the Client;
<b>“AWR Claim”</b>	means any complaint or claim to a tribunal or court made by or on behalf of the Consultancy against the Client and/or the Employment Business for any breach of the Agency Workers Regulations;
<b>“Calendar Week”</b>	means any period of seven days starting with the same day as the first day of the First Assignment;
<b>“Charges”</b>	means the charges as notified to the Client at the commencement of the Assignment and which may be varied by the Employment Business from time to time during the Assignment. The charges are comprised of the fees of the Consultancy (including any payments for holiday pay, employers National Insurance, pensions and additional amounts as required by the Agency Workers Regulations, where applicable), the Employment Business’ commission and agreed expenses;
<b>“Client”</b>	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 Consultancy is Introduced;
<b>“Client's Group”</b>	means (a) any individual, company, partnership, statutory body or other entity which from time to time Controls the Client, 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 Client, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006;
<b>“Comparable Employee”</b>	means as defined in Regulation 5(4) of the Agency Workers Regulations;
<b>“Conditions of Liability”</b>	means meets the requirements of section 50(1)(b) ITEPA and one of the conditions of liability set out in Sections 51 to 53 ITEPA;
<b>“Conduct Regulations”</b>	means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
<b>“Confidential Information”</b>	means any and all confidential commercial, financial, marketing, technical or other information or data of whatever

nature relating to the Client or Employment Business or their business or affairs (including but not limited to these Terms, data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information concerning the Assignment) in any form or medium whether disclosed or granted access to whether in writing, orally or by any other means, provided to the Consultancy or any third party in relation to the Assignment by the Client or the Employment Business or by a third party on behalf of the Client whether before or after the date of these Terms together with any reproductions of such information in any form or medium or any part(s) of such information;

**“Consultancy”**

means the individual or limited company contractor is Introduced by the Employment Business to provide services to the Client. For the avoidance of doubt, where the Consultancy is a limited company contractor, “Consultancy” includes any officer, employee or representative and any third party to whom the consultancy services are assigned to on behalf of the Consultancy;

**“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 2018, the General Data Protection Regulation (EU2016/679) and any applicable statutory or regulatory provisions and all European Directives and regulations in force from time to time relating to the protection and transfer of personal data;

**“Employment Business”**

Faststream Recruitment Limited trading as FRAME (registered company no. 3708452) of Waterside Place, 5 Town Quay, Southampton, SO14 2AQ

**“Engagement”**

means the engagement, employment or use of the consultancy by the Client or any third party to whom the Consultancy has been introduced by the Client, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, and/or through a company of which the Consultancy is an officer, employee or other representative, an agency, license, franchise or partnership arrangement, or any other engagement; and “Engage”, “Engages” and “Engaged” shall be construed accordingly;

**“Exempt Organisation”**

means an organisation which is exempt from the Off-Payroll Rules;

<b>“First Assignment”</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) the relevant Assignment; or</li> <li>(b) if, prior to the relevant Assignment: <ul style="list-style-type: none"> <li>(i) the Consultancy has worked in any assignment in the same role with the relevant Client as the role in which the Consultancy works in the relevant Assignment; and</li> <li>(ii) the relevant Qualifying Period commenced in any such assignment, that assignment (an assignment being (for the purpose of this defined term) a period of time during which the Consultancy is supplied by one or more Temporary Work Agencies to the relevant Client to work temporarily for and under the supervision and direction of the relevant Client);</li> </ul> </li> </ul>
<b>“Inside IR35”</b>	<p>means an Assignment which the Client has determined meets the conditions of Section 61M ITEPA;</p>
<b>“Introduction”</b>	<p>means (i) the passing to the Client of a curriculum vitae or information which identifies the Consultancy; or (ii) the Client’s interview of the Consultancy (in person or by telephone or by any other means), following the Client’s instruction to the Employment Business to supply a temporary worker; or (iii) the supply of the Consultancy; and, in any case, which leads to an Engagement of the temporary worker or the Consultancy; and “Introduced” and “Introducing” shall be construed accordingly;</p>
<b>“ITEPA”</b>	<p>means the Income Tax (Earnings and Pensions) Act 2003;</p>
<b>“Losses”</b>	<p>means all losses, liabilities, damages, costs, expenses whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands;</p>
<b>“Off-Payroll Rules”</b>	<p>means Part 2, Chapter 10 ITEPA;</p>
<b>“Outside IR35”</b>	<p>means an Assignment which the Client has determined does not meet the conditions of Section 61M ITEPA;</p>
<b>“PSC”</b>	<p>means a Consultancy that meets the Conditions of Liability, and where relevant includes the Consultancy staff providing their services through the PSC and any substitute, or assignees or sub-contractors to whom the PSC has assigned or sub-contracted the delivery of the Assignment;</p>
<b>“Period of Extended Hire”</b>	<p>means any additional period that the Client wishes the Consultancy to be supplied for beyond the duration of the</p>

original Assignment or series of Assignments as an alternative to paying a Transfer Fee;

**“Public Authority”**

means a public authority (a) as defined by the Freedom of Information Act 2000 and (b) as further defined in Section 61L of the Income Tax (Earnings and Pensions) Act 2003;

**“Qualifying Period”**

means 12 continuous Calendar Weeks during the whole or part of which the Consultancy is supplied by one or more Temporary Work Agencies to the relevant Client to work temporarily for and under the supervision and direction of the relevant Client in the same role and as further defined by regulations 7 and 8 of the Agency Workers Regulations;

**“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 Consultancy worked for the Client having been supplied by the Employment Business; or (b) the period of 14 weeks commencing on the first day on which the Consultancy worked for the Client having been supplied by the Employment Business or 14 weeks from the first day of the most recent Assignment where there has been a break of more than 6 weeks (42 days) since any previous assignment;

**“Relevant Terms and Conditions”**

means terms and conditions relating to:

- (a) pay;
- (b) the duration of working time;
- (c) night work;
- (d) rest periods;
- (e) rest breaks; and
- (f) annual leave

that are ordinarily included in the contracts of employees or workers (as appropriate) of the Client whether by collective agreement or otherwise and including (for the avoidance of doubt and without limitation) such terms and conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation;

**“Remuneration”**

includes gross base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Consultancy for services provided to or on behalf of the Client or any third party. Where a company car is provided, a notional amount of £6,000 will be added to the salary in order to calculate the Employment Business' fee;

**“Temporary Work Agency”**

means as defined by Regulation 4 of the Agency Workers Regulations;

**“Terms”**

means these terms of business;

**“Transfer Fee”** means the fee payable in accordance with clause 9 and 9A of these Terms;

**“Vulnerable Person”** means any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention, and includes any person under the age of eighteen; and

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

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

## 2. THE CONTRACT

- 2.1. These Terms together with the schedules constitute the contract between the Employment Business and the Client for the supply of the Consultancy’s services by the Employment Business to the Client and are deemed to be accepted by the Client by virtue of its request for, interview with or Engagement of the Consultancy, or the passing of any information by the Client about a Consultancy to any third party following an Introduction.
- 2.2. These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by a Director the Employment Business and the Client, these Terms prevail over any terms of business or purchase conditions (or similar) put forward by the Client.
- 2.3. Subject to clause 7.2, no variation or alteration to these Terms shall be valid unless the details of such variation are agreed between a Director of the Employment Business and the Client and are set out in writing and a copy of the varied Terms is given to the Client stating the date on or after which such varied Terms shall apply.
- 2.4. The Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973) when Introducing Consultancies for Assignments with the Client.
- 2.5. These Terms shall apply to the supply of both PAYE and limited company contractors save that in the case of limited company contractors who have contracted out of the Conduct regulations, Clause 9 (Extended Period of Hire and Introduction Fees) shall be substituted with Clause 9A.

## 3. CLIENT OBLIGATIONS

- 3.1. To enable the Employment Business to comply with its obligations under the Conduct Regulations the Client undertakes to provide to the Employment Business details of the position which the Client seeks to fill, including the following:
  - 3.1.1. the type of work that the Consultancy would be required to do;

- 3.1.2. the location and hours of work;
  - 3.1.3. the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Consultancy to possess in order to work in the position;
  - 3.1.4. any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
  - 3.1.5. the date the Client requires the Consultancy to commence the Assignment;
  - 3.1.6. the duration or likely duration of the Assignment.
- 3.2. where applicable, the Client will assist the Employment Business in complying with the Employment Business' duties under the Working Time Regulations by supplying any relevant information about the Assignment requested by the Employment Business and the Client will not do anything to cause the Employment Business to be in breach of its obligations under these Regulations. If the Client requires the services of a Consultancy for more than 48 hours in any week during the course of an Assignment, the Client must notify the Employment Business of this requirement before the commencement of the Assignment or at the very latest, where this is not reasonably practicable, before the commencement of the week in which the Client requires the Consultancy to work in excess of 48 hours.
- 3.3. The Client will comply with its obligations under Regulation 12 (Rights of agency workers in relation to access to collective facilities and amenities) and 13 (Rights of agency workers in relation to access to employment) of the Agency Workers Regulations.
- 3.4. To enable the Employment Business to comply with its obligations under the Agency Workers Regulations, the Client undertakes as soon as possible prior to the commencement of each Assignment and during each Assignment (as appropriate) and at any time at the Employment Business' request:
- 3.4.1. to inform the Employment Business of any Calendar Weeks since 1 October 2011 in which the relevant Consultancy has worked in the same or a similar role with the Client via any third party prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment which count or may count towards the Qualifying Period;
  - 3.4.2. if, since 1 October 2011, the Consultancy has worked in the same or a similar role with the Client via any third party prior to the date of commencement of the relevant Assignment and/or works in the same or a similar role with the Client via any third party during the relevant Assignment, to provide the Employment Business with all the details of such work, including (without limitation) details of where, when and the period(s) during which such work was undertaken and any other details requested by the Employment Business;
  - 3.4.3. to inform the Employment Business if, since 1 October 2011, the Consultancy has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment:
    - 3.4.3.1. completed two or more assignments with the Client;

- 3.4.3.2. completed at least one assignment with the Client and one or more earlier assignments with any member of the Client's Group; and/or
- 3.4.3.3. worked in more than two roles during an assignment with the Client and on at least two occasions worked in a role that was not the same role as the previous role;
- 3.4.4. save where the Consultancy will not complete the Qualifying Period during the term of the Assignment, to:
  - 3.4.4.1. provide the Employment Business with written details of the basic working and employment conditions the Consultancy would be entitled to for doing the same job if the Consultancy had been recruited directly by the Client as an employee or worker at the time the Qualifying Period commenced or with those of a Comparable Employee, such basic working and employment conditions being the Relevant Terms and Conditions;
  - 3.4.4.2. inform the Employment Business in writing whether the Relevant Terms and Conditions provided are those of a hypothetical directly recruited employee or worker or those of a Comparable Employee;
  - 3.4.4.3. if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide the Employment Business with a written explanation of the basis on which the Client considers that the relevant individual is a Comparable Employee; and
  - 3.4.4.4. inform the Employment Business in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced;
- 3.4.5. save where the Consultancy will not complete the Qualifying Period during the term of the Assignment, to provide the Employment Business with written details of its pay and benefits structures and appraisal processes and any variations of the same.
- 3.5. In addition, for the purpose of calculating any bonus to which the Consultancy may be entitled under the Agency Workers Regulations, the Client will:
  - 3.5.1. integrate the Consultancy into its relevant performance appraisal system;
  - 3.5.2. assess the Consultancy's performance;
  - 3.5.3. provide the Employment Business with copies of all documentation relating to any appraisal of the Consultancy, including without limitation written details of the outcome of any appraisal and the amount of any bonus calculated; and
  - 3.5.4. provide the Employment Business with all other assistance the Employment Business may request in connection with the assessment of the Consultancy's performance for the purpose of calculating any bonus.
- 3.6. The Client will comply with all the Employment Business' requests for information and any other requirements to enable the Employment Business to comply with the Agency Workers Regulations.
- 3.7. The Client warrants that:

- 3.7.1. all information and documentation supplied to the Employment Business in accordance with clauses 3.4, 3.5 and 3.6 is complete, accurate and up-to- date; and
  - 3.7.2. it will, during the term of the relevant Assignment, immediately inform the Employment Business in writing of any subsequent change in any information or documentation provided in accordance with clauses 3.4, 3.5 and 3.6;
- 3.8. Without prejudice to clauses 15.7 and 15.8, the Client shall inform the Employment Business in writing of any:
- 3.8.1. oral or written complaint the Consultancy makes to the Client which is or may be a complaint connected with rights under the Agency Workers Regulations; and
  - 3.8.2. written request for information relating to the Relevant Terms and Conditions that the Client receives from the Consultancy as soon as possible but no later than 7 calendar days from the day on which any such oral complaint is made to or written complaint or request is received by the Client and the Client will take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business, in order to resolve any such complaint or to provide any such information in a written statement to the Consultancy within 28 days of the Client's receipt of such a request in accordance with Regulation 16 of the Agency Workers Regulations and the Client will provide the Employment Business with a copy of any such written statement.
- 3.9. With regards to the Off-Payroll Rules, the Client shall:
- 3.9.1. Upon request confirm whether it is an Exempt Organisation and shall notify the Employment Business if their status change.
  - 3.9.2. Where the Client is not an Exempt Organisation, the Client acknowledges that where a Consultancy provides their services through a PSC, the Client has certain obligations under the Off-Payroll Rules.
  - 3.9.3. In order for the Employment Business to meet its obligations under the Off-Payroll Rules, the Client will:
    - 3.9.3.1. give its Status Determination Statement (“**SDS**”) to both the Consultancy and the Employment Business before the relevant Assignment starts. In the SDS the Client must confirm whether the relevant Assignment is Inside IR35 or Outside IR35, and give complete and accurate reasons for its decision. The Client will use best endeavours when making its status decision. The Client acknowledges that if it does not give a valid SDS (a) the Employment Business may not be able to supply or Introduce a PSC to it but (b) if the Employment Business does supply or Introduce a PSC to the Client, the Client will be deemed to be the fee-payer (as defined in the Off-payroll Rules) until such time as it does give a valid SDS;
    - 3.9.3.2. the Client will respond in full within 7 days to any query raised about its SDS by any of the PSC, the Consultancy providing their services through the PSC or the Employment Business
    - 3.9.3.3. the Client will review the circumstances of the Assignment every 6 months to check whether its SDS remains correct. If the Client reviews the circumstances of the



Assignment and the status of the Assignment has changed, the Client must withdraw its existing SDS and issue a new SDS immediately, stating the date from which the new SDS applies. Where the Client previously gave a SDS which stated that the Assignment was Outside IR35, the Client is liable for any unpaid tax, national insurance (both employee and employer) and Apprenticeship Levy which would have been due had the Client initially given a SDS which stated that the Assignment was Inside IR35.

3.10. The Client undertakes that it knows of no reason why it would be detrimental to the interests of the Consultancy for the Consultancy to fill the Assignment.

#### **4. WHERE THE CLIENT IS A PUBLIC AUTHORITY**

4.1. The Client shall confirm to the Employment Business that it is a Public Authority.

4.2. The Client also confirms that the role which the Consultancy Staff will fill is not an office holder role and that the services of the Consultancy Staff will provide will not be those of an office holder.

4.3. The Client shall assess the Assignment to determine whether it meets the provisions of Section 61M of the Income Tax (Earnings and Pensions) Act 2003. The Client shall inform the Employment Business of its determination prior to the commencement of the Assignment.

4.4. The Client will advise the Employment Business in writing immediately if any of the circumstances of the Assignment change which mean that the determination made in clause 4.3 would change.

#### **5. INFORMATION TO BE PROVIDED BY THE EMPLOYMENT BUSINESS TO THE CLIENT**

5.1. When Introducing a Consultancy to the Client the Employment Business shall inform the Client:

5.1.1. of the identity of the Consultancy (and if appropriate of the person who will carry out work on behalf of the Consultancy);

5.1.2. that the Consultancy has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment;

5.1.3. that the Consultancy is willing to work in the Assignment;

5.1.4. details of the Consultancy Services to be provided; and

5.1.5. the Charges.

#### **6. VERIFICATION OF EXECUTION OF THE SERVICES**

6.1. At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of 1 week or less) the Client shall sign or approve online the Employment Business' timesheet verifying the number of hours worked by the Consultancy during that week.

6.2. Verification of the timesheet constitutes acceptance that the Consultancy's services have been carried out satisfactorily and in accordance with these Terms. If the Client is unable to sign a timesheet because the Client disputes the hours claimed, the Client shall inform the Employment Business as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what hours, if any, were

worked by the Consultancy. Failure to sign the timesheet does not absolve the Client of its obligation to pay the Charges in respect of the hours worked.

- 6.3. The Client shall not be entitled to decline to sign a timesheet on the basis that it is dissatisfied with the work performed by the Consultancy. In the event that the Client is dissatisfied with the Consultancy the provisions of clause 11.1 below shall apply.

## **7. CHARGES**

- 7.1. The Client agrees to pay the Charges as notified to and agreed with the Client.
- 7.2. The Employment Business reserves the right to vary the Charges agreed with the Client, by giving written notice to the Client:
- 7.2.1. in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the Agency Workers Regulations; and/or
  - 7.2.2. if there is any variation in the Relevant Terms and Conditions.
- 7.3. The Charges are invoiced to the Client on a weekly basis and are payable within 14 days.
- 7.4. VAT is payable at the applicable rate on the entirety of the Charges and all sums payable under clause 7.2.
- 7.5. The Employment Business reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.
- 7.6. No refunds are payable in respect of the Charges of the Employment Business.
- 7.7. The Client's obligations under this clause 7 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.

## **8. PAYMENT OF THE CONSULTANCY**

- 8.1. The Employment Business assumes responsibility for paying the Consultancy's fees and where appropriate, for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Consultancy pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003.

## **9. TRANSFER FEES**

- 9.1. In the event of the Engagement of a Consultancy supplied by the Employment Business either (1) directly by the Client or (2) by the Client pursuant to being supplied by another employment business, during the Assignment or within the Relevant Period the Client can either elect:
- 9.1.1. Subject to electing upon giving 7 days' notice, have an extended period of hire of the Consultancy being 26 weeks during which the Employment Business shall be entitled to the charges set out in clause 7.1 above for each hour the Consultancy is so employed or supplied; or

- 9.1.2. To pay an Introduction Fee calculated in accordance with Clause 9.6 below.
  - 9.1.3. No refund of the Introduction Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due.
- 9.2. In the event that there is an Introduction of a Consultancy to the Client (but no supply of the Consultancy) within 6 months of the Introduction which leads to an Engagement of the Consultancy by the Client either directly or pursuant to being supplied by another employment business the Client can elect to either:
- 9.2.1. Subject to electing upon giving 7 days' notice, have a period of hire of the Consultancy being 26 weeks during which the Employment Business shall be entitled to the Charges set out in clause 7.1 above for each hour the Consultancy is so employed or supplied; or
  - 9.2.2. An Introduction Fee calculated in accordance with clause 9.6 below. No refund of the Introduction Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due.
- 9.3. In the event that the Engagement of the Consultancy is for a fixed term of less than 12 months, the fee in clause 9.1.2 or 9.2.2 will apply pro-rata. If the Engagement is extended beyond the initial fixed term or if the Client re-engages the Consultancy within 3 months of the termination of the first Engagement the Client shall be liable to pay a further fee based on the additional Remuneration applicable for the period of Engagement following the initial fixed term up to the Termination of the second Engagement or the first anniversary, whichever is sooner.
- 9.4. In the event that the Consultancy is introduced (either directly or indirectly) by the Client to a third party which results in an Engagement of the Consultancy by the third party within the 6 months of the Introduction, the Client shall be liable to pay an Introduction fee calculated in accordance with Clause 9.6 below. No refund of the Introduction Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due.
- 9.5. Where the Client elects to extend the period of hire in accordance with clause 9.1.1 or 9.2.1 above, the Client must give the Employment Business 7 days' prior notice in writing of its intention to do so. Where the Client fails to give such notice and directly engages the Consultancy, the Introduction Fee will automatically become payable in accordance with clause 9.1.2 or 9.2.2.
- 9.6. For the purposes of this clause 9 the Introduction Fee is calculated as follows: 25% of the Remuneration applicable during the first 12 months of the Engagement or if the actual Remuneration is not known, or the Client fails to inform the Employment Business of the annual remuneration of the Consultancy, the Introduction Fee will be the hourly charge referred to in clause 7.1 multiplied by 300. In the event that daily rates are used then the Introduction will be the daily rate referred to in clause 7.1 multiplied by 40
- 9.7. In the event that any Employment Business staff with whom the Client has had personal dealings accepts an Engagement with the Client while employed by the Employment Business, the Client shall be liable to pay the Employment Business a fee equivalent to the Introduction Fee calculated in accordance with clause 9.6. For the avoidance of doubt, the Client shall not be entitled to a refund for any fee due under this clause 9.7 in any circumstances.
- 9A. (FOR LIMITED COMPANY CONTRACTORS WHO HAVE OPTED OUT OF THE CONDUCT REGULATIONS ONLY)**

- 9A.1 The direct Engagement by a Client of a Consultancy introduced by the Employment Business, or the Introduction of a Consultancy to any third party resulting in an Engagement by the third party renders the Client subject to the payment of an Introduction Fee of 25% of the Remuneration applicable during the first 12 months of the Engagement or if the actual Remuneration is not known, or the Client fails to inform the Employment Business of the annual Remuneration of the Consultancy, the Introduction will be the hourly charge referred to in clause 7.1 multiplied by 300. In the event that daily rates are used then the Introduction will be the daily rate referred to in clause 7.1 multiplied by 40. No refund of the Introduction fee will be paid in the event that the Engagement subsequently terminates.
- 9A.2 The above Introduction Fee will only be payable provided that the Engagement takes place within a period of 6 months from the Termination of the Assignment under which the Consultancy was last supplied or if there was no Assignment, within 12 months of the Introduction of the Consultancy by the Employment Business.
- 9A.3 VAT will be charged on the Introduction Fee if Applicable.
- 9A.4 In the event that the Engagement is for a fixed term of less than 12 months, the Introduction Fee will apply pro-rata. If the Engagement is extended beyond the initial fixed term or if the Client re-engages the Consultancy within 12 calendar months of the first Engagement the Client shall be liable to pay a further fee based on the additional Remuneration applicable for the period of Engagement following the initial fixed term up to the termination date of the subsequent Engagement or the first anniversary of its commencement, whichever is the sooner.

## 10. SUITABILITY CHECKS AND INFORMATION TO BE PROVIDED IN SPECIAL SITUATIONS

### 10.1. Where:

- 10.1.1. the Consultancy is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment, the Employment Business will take all reasonably practicable steps to obtain and offer to provide to the Client copies of any relevant qualifications or authorisations of the Consultancy; and
- 10.1.2. in addition, where the Assignment involves working with, caring for or attending one or more Vulnerable Persons, the Employment Business will take all reasonably practicable steps to obtain and offer to provide copies to the Client of two references from persons who are not relatives of the Consultancy and who have agreed that the references they provide may be disclosed to the Client;

and such other reasonably practicable steps as are required to confirm that the Consultancy is suitable for the Assignment. If the Employment Business has taken all reasonably practicable steps to obtain the information above and has been unable to do so fully it shall inform the Client of the steps it has taken to obtain this information in any event.

- 10.2. The Client shall advise the Employment Business at the time of instructing the Employment Business to supply a Consultancy whether during the course of the Assignment, the Consultancy will be required to work with, care for or attend one or more Vulnerable Persons or engage in activity or otherwise be working in a position covered by the Safeguarding Vulnerable Groups Act 2006 or the Protecting Vulnerable Groups (Scotland) Act 2007 as applicable.
- 10.3. The Client shall assist the Employment Business by providing any information required to allow the Employment Business to comply with its statutory obligations under the Safeguarding

Vulnerable Groups Act 2006 or the Protecting Vulnerable Groups (Scotland) Act 2007 as applicable and to allow the Employment Business to select a suitable Consultancy for the Assignment.

- 10.4. In particular in the event that the Client removes a Consultancy from an Assignment in circumstances which would require the Employment Business to provide information to the Independent Safeguarding Authority (or the equivalent authority) under the Safeguarding Vulnerable Groups Act 2006 or the Protecting Vulnerable Groups (Scotland) Act 2007, the Client will provide sufficient information to the Employment Business to allow it to discharge its statutory obligations.

## 11. UNSUITABILITY OF THE CONSULTANCY

- 11.1. The Client undertakes to supervise the Consultancy sufficiently to ensure the Client's satisfaction with the Consultancy's standards of work. If the Client reasonably considers that the services of the Consultancy are unsatisfactory, the Client may terminate the Assignment either by instructing the Consultancy to leave the Assignment immediately, or by directing the Employment Business to remove the Consultancy.
- 11.2. The Employment Business shall notify the Client immediately if it receives or otherwise obtains information which gives the Employment Business reasonable grounds to believe that any Consultancy supplied to the Client is unsuitable for the Assignment and shall be entitled to terminate the Assignment forthwith without prior notice and without liability. Notwithstanding, the Client shall remain liable for all Charges incurred prior to the termination of the Assignment.
- 11.3. The Client shall notify the Employment Business immediately and without delay and in any event within 24 hours if the Consultancy fails to attend work or has notified the Client that they are unable to attend work for any reason.

## 12. TERMINATION

- 12.1. Either party may terminate the Assignment by giving to the other party in writing the period of notice as agreed between the parties.
- 12.2. Notwithstanding the provisions of clause 12.1 the Client may terminate the Assignment forthwith by notice in writing to the Employment Business where:
- 12.2.1. the Consultancy has acted in breach of any statutory or other reasonable rules and regulations applicable to them while providing the Consultancy Services; or
- 12.2.2. the Consultancy is in wilful or persistent breach of its obligations; or
- 12.2.3. the Client reasonably believes that the Consultancy has not observed any condition of confidentiality applicable to the Consultancy from time to time; or
- 12.2.4. the Client reasonably considers that the Consultancy's provision of the Consultancy Services is unsatisfactory.
- 12.3. the Employment Business may terminate an Assignment forthwith by notice in writing if:

- 12.3.1. the Client is in wilful or persistent breach of its obligations under this Agreement and where the breach is capable of being remedied, fails to remedy the breach within 7 days of receiving written notice from the Employment Business to do so; or
- 12.3.2. the Client fails to pay any amount which is due to the Employment Business in full and on the date that the payment falls due; or
- 12.3.3. the Client is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; or
- 12.3.4. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Client; or
- 12.3.5. an order is made for the winding up of the Client, or where the Client passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation or amalgamation where the resulting entity will assume all the obligations of the other party under this Agreement); or
- 12.3.6. (where the Client is an individual) the Client dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.
- 12.3.7. The Employment Business knows or suspect that the Client has breached the Data Protection Laws.
- 12.3.8. the Employment Business knows or suspects that the Client is an Exempt Organisation; or
- 12.3.9. the Employment Business knows or suspects that the Client has not used best endeavours in providing its SDS or that the SDS is incorrect; or
- 12.3.10. the Client advises that the circumstances of that Assignment have changed so that an Outside IR35 Assignment has become an Inside IR35 Assignment or vice versa; or
- 12.3.11. where the Consultancy works through a PSC, the Employment Business knows or suspects that the Consultancy no longer meets the Conditions of Liability;
- 12.3.12. WHERE THE CLIENT HAS ASSESSED THE ASSIGNMENT AS OUTSIDE IR35:
  - 12.3.12.1. the Employment Business knows or suspects that the PSC or Intermediary Staff work under (or subject to the right of) supervision, direction or control of any person as to the manner in which they provide the Assignment Services, in breach of this Agreement; or
  - 12.3.12.2. the Client does not give accurate and sufficient evidence that the PSC or Intermediary Staff do not work under (or subject to the right of) supervision, direction or control of any person as to the manner in which it provides the Assignment Services; or
  - 12.3.13. either the Client or the PSC gives the Employment Business a document which fraudulently states that the PSC or Intermediary Staff do not work under (or is not

subject to) the supervision, direction or control of any person as to the manner in which they provide the Assignment Services

### **13. CONFIDENTIALITY AND DATA PROTECTION**

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

### **14. INTELLECTUAL PROPERTY RIGHTS**

- 14.1. All copyright, trademarks, patents and other intellectual property rights deriving from the provision of the Consultancy Services by the Consultancy or any third party to whom the Consultancy Services are assigned or sub-contracted for the Client during the Assignment shall belong to the Client, save such rights as may be expressly owned or retained by the Consultancy and set out in Schedule 1 to this Agreement. Accordingly the Employment Business shall use its reasonable endeavours to ensure that the Consultancy shall (and any relevant member of the Consultancy Staff shall) execute all such documents and do all such acts in order to give effect to the Client's rights pursuant to this clause.

### **15. LIABILITY**

- 15.1. Whilst reasonable efforts are made by the Employment Business to give satisfaction to the Client by ensuring reasonable standards of skill, integrity and reliability from the Consultancy and to provide the same in accordance with the Assignment details as provided by the Client, no liability is accepted by the Employment Business for any loss, expense, damage or delay arising from any failure to provide any Consultancy for all or part of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Consultancy or if the Consultancy terminates the Assignment for any reason. For the avoidance of doubt, the Employment Business does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.
- 15.2. Consultancies supplied by the Employment Business pursuant to these Terms are engaged under contracts for services. They are not the employees of the Employment Business. For the avoidance of doubt the consultancy is not under the supervision or control of the Employment Business.
- 15.3. The Client shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Consultancy and about any requirements imposed by law or by any professional body, which must be satisfied if the Consultancy is to fill the

Assignment. The Client will comply in all respects with all relevant statutes, by-laws, codes of practice and legal requirements including the provision of adequate public liability insurance in respect of the Consultancy.

- 15.4. The Client will also comply in all respects with all statutory provisions as are in force from time to time including, for the avoidance of doubt, but not limited to the Working Time Regulations, Health and Safety At Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999, by-laws, codes of practice and legal requirements to which the Client is ordinarily subject in respect of the Client's own staff (excluding the matters specifically mentioned in clause 7 above), including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Consultancy during all Assignments.
- 15.5. The Client undertakes not to request the supply of a Consultancy to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by a worker who has been transferred by the Client to perform the duties of a person on strike or taking official industrial action.
- 15.6. The Client shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business arising out of any Assignment or arising out of any non-compliance with, and/or as a result of any breach of, these Terms by the Client.
- 15.7. The Client shall inform the Employment Business in writing of any AWR Claim which comes to the notice of the Client as soon possible but no later than 7 calendar days from the day on which any such AWR Claim comes to the notice of the Client.
- 15.8. If the Consultancy brings, or threatens to bring, any AWR Claim, the Client undertakes to take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business and at the Client's own cost, to avoid, dispute, resist, mitigate, compromise or defend any such AWR Claim and to appeal against any judgment given in respect thereof.
- 15.9. The Client shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business by reason of ant proceedings, claims or demands by the Consultancy, the Consultancy Staff or any third party arising out of any non-compliance with, and/or as a result of, any breach of the Data Protections Laws by the Client.

## 16. NOTICES

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

## 17. SEVERABILITY

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



**18. GOVERNING LAW AND JURISDICTION**

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

<p>SIGNED:</p>  <p>DATE:</p>  <p>NAME:</p>  <p>COMPANY NAME:</p>	<p>SIGNED:</p>  <p>DATE:</p>  <p>NAME:</p>  <p>FRAME (a trading name of FASTSTREAM RECRUITMENT LIMITED )</p>
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