



THE PARTIES

- (1) **[insert intermediary's name]** Limited (registered company no. **[insert registered company no.]**) [trading as **[insert trading name if different]**] of **[insert intermediary's address]** [see Note **Error! Reference source not found.**] ("**the Intermediary**").
- (2) Any of the following Companies;
PROMAN Supply Chain Ltd (registered company no. 3443013)
PROMAN Managed Services Ltd (registered company no. 04163986)
PROMAN Recruitment Ltd (registered company no. 09907561)
All trading as "PROMAN" of Building 2, Thin Park, Mosley Rd, Trafford Park, Manchester, M17 1FQ; ("**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**") as 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 provide the Intermediary Services to the Hirer on the terms and subject to the terms of this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement the following definitions apply:

- "**Agency Worker**" means such of the Intermediary's employees, workers, officers or representatives supplied to provide the Intermediary Services;
- "**Assignment**" means the Intermediary Services to be performed by the Agency Worker for a period of time during which the Intermediary is supplied by the Employment Business to the Hirer;
- "**Assignment Details Form**" means written confirmation of the Assignment details set out in clause **Error! Reference source not found.**;
- "**AWR**" means the Agency Workers Regulations 2010;
- "**AWR Regulation 10 Contract of Employment**" means a permanent contract of employment between the Intermediary and the Agency Worker that satisfies the requirements of Regulation 10 of the AWR;
- "**Calendar Week**" means any period of seven days starting with the same day as the first day of the First Assignment;
- "**Companies Acts**" means the Companies Acts 1985, 1989 and 2006;
- "**Conditions of Liability**" means one of the conditions of liability set out in Sections 51 to 53 and 61N, 61O and 61P ITEPA;
- "**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 2018, 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 Agency Worker's acceptance of the Hirer's offer), employment or use of the Intermediary and/or any Agency Worker by the Hirer or by any third party to whom the Intermediary and/or any Agency Worker 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 Agency Worker has worked in any assignment in the same role with the relevant Hirer as the role in which the Agency Worker works in the relevant Assignment; and
ii. the relevant Qualifying Period commenced in any such assignment,

that assignment (an assignment being (for the purpose of this defined term) a period of time during which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Hirer to work temporarily for and under the supervision and direction of the relevant Hirer);

"Hirer"	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 as set out in the relevant Assignment Details Form;
"IR35 Legislation"	means Chapter 8 of Part 2 of ITEPA;
"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;
"MSC Legislation"	means Chapter 9 of Part 2 of ITEPA;
"NICs Legislation"	means the Social Security (Categorisation of Earners) Regulations 1978;
"Qualifying Period"	means 12 continuous Calendar Weeks during the whole or part of which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Hirer to work temporarily for and under the supervision and direction of the relevant Hirer in the same role, and as further defined in the Schedule to this Agreement;
"Relevant Terms and Conditions"	<p>means terms and conditions relating to:</p> <ul style="list-style-type: none"> (a) pay; (b) the duration of working time; (c) night work; (d) rest periods; (e) rest breaks; and (f) annual leave <p>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;</p>
"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 Work Agency"	means as defined in the Schedule to this Agreement;
"Transparency Regulations"	means the Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015;
"WTR"	means the Working Time Regulations 1998;

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

2. THE AGREEMENT

- 2.1. This Agreement together with the Assignment Letter ("**the Agreement**") constitutes the entire agreement between the Employment Business and the Intermediary for the supply of the Intermediary Services to the Client and governs the Assignment undertaken by the Intermediary with the Client. This Agreement shall prevail over any other terms put forward by the Intermediary.
- 2.2. For the avoidance of doubt this Agreement shall not be construed as a contract of employment between any Intermediary Staff supplied to provide the Intermediary Services and either the Employment Business or the Client 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 Agreement is given to the Intermediary stating the date on or after which such varied Agreement shall apply.
- 2.4. The Assignment Letter shall specify the Client, the Intermediary Fees payable by the Employment Business and such expenses as may be agreed, any notice period and any other information relevant to the Assignment.

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

- 3.1. The Employment Business is not obliged to offer Assignments to the Intermediary and the Intermediary is not obliged to accept any Assignment. Both parties acknowledge that there is no intention to create mutuality of obligation during any Assignment or between Assignments.
- 3.2. 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 of complying with all statutory and legal requirements relating to the Intermediary Staff (including but not limited to matters of taxation and compliance with the immigration laws applicable to the jurisdiction in which the Intermediary Services are provided) shall fall upon and be discharged wholly and exclusively by the Intermediary.
- 3.3. Nothing in this Agreement shall render any member of the Intermediary Staff an employee or worker of either the Employment Business or the Client. The Intermediary shall ensure that none of the Intermediary Staff holds themselves out as an employee or worker of either the Employment Business or the Client. In the event that any person should seek to establish any liability or obligation upon the Employment Business on the grounds that the Intermediary Staff are an employee or worker of the Employment Business or the Client, the Intermediary shall upon demand indemnify the Employment Business and/or the Client and keep them indemnified in respect of any such liability or obligation and any related Losses which the Employment Business shall incur.
- 3.4. The Intermediary acknowledges that no member of the Intermediary Staff is an agency worker as defined under the AWR and that the AWR do not apply in relation to this Agreement or any Assignment under this Agreement. The Intermediary shall indemnify and keep indemnified the Employment Business (or, as the case may be, the Client) against any Losses the Employment Business (or the Client) may suffer or incur as a result of any claim made by or on behalf of any member of the Intermediary Staff under the AWR.
- 3.5. The Intermediary shall provide the Intermediary Services and subject to the prior written approval of the Client (which will not be unreasonably withheld or delayed) shall be entitled to assign or sub-contract the performance of the Intermediary Services, provided that the Employment Business and the Client are reasonably satisfied that the assignee or sub-contractor has the required skills, qualifications, resources and personnel to provide the Intermediary Services to the required standard and that the terms of any such assignment or sub-contract contain the same acknowledgements under and obligations imposed by this Agreement.
- 3.6. Save as otherwise stated in this Agreement, the Intermediary shall be entitled to supply its services to any third party during the term of this Agreement provided that this in no way compromises or is to the detriment of the supply of its services to the Client or amounts to a breach of this Agreement.
- 3.7. Neither the Intermediary nor the Intermediary Staff work under (or subject to the right of) supervision, direction or control by any person as to the manner in which they provide the Intermediary Services. Accordingly, the Intermediary shall be permitted to determine how it will provide the Intermediary Services and, subject to complying with any reasonable operational requirements of the Client, will have the flexibility to determine the number of hours required to provide, and the times during which it will provide, the Intermediary Services. The Intermediary will be at liberty to determine the location at which the Intermediary Services will be provided, but where the Intermediary Services are undertaken at the Client's site, the Intermediary will comply with any reasonable requirements relating to working hours, and any other operational requirements in relation to that site.

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. the Intermediary Staff have the necessary skills and qualifications to perform the Intermediary Services;
 - 4.1.3. the Intermediary and the Intermediary Staff providing the Intermediary Services have agreed to opt out of the Conduct Regulations and have signed an agreement to that effect and as such understand that none of the Conduct Regulations apply to this Assignment. Further the Intermediary warrants that it will only supply staff to perform the Intermediary Services who have opted out of the Conduct Regulations and further that any person to whom the performance of the Intermediary Services are assigned or sub-contracted has opted out of the Conduct Regulations;
 - 4.1.4. the Intermediary is a personal service company but that it is not a "managed service company" as defined in either section 61B or section 339A of ITEPA and that it is compliant in all respects with ITEPA (including specifically both the IR35 Legislation and the MSC Legislation) and the NICs Legislation;
 - 4.1.5. the Intermediary is incorporated in the UK and that all directors are resident in the UK for tax purposes;
 - 4.1.6. the Intermediary will pay the Intermediary Staff only into a nominated UK bank account in the Intermediary's name;
 - 4.1.7. all information the Intermediary provides to the Employment Business in order to comply with the Reporting Requirements and clauses 5.1.12 and 5.1.15 is complete and accurate;
 - 4.1.8. the Intermediary and the Intermediary Staff will comply with the Data Protection Laws.
- 4.2. The Intermediary shall procure that the Intermediary Staff, any sub-contractor or assignee performing the Intermediary Services warrant that they are not and do not operate as "managed service companies" as defined in section 61B and section 339A of ITEPA but that they are personal service companies which are compliant in all respects with ITEPA (including specifically the IR35 Legislation and the MSC Legislation) and the NICs legislation.
- 4.3. The Intermediary warrants to the Employment Business that the Intermediary Staff have consented in writing to the Client, the Employment Business and to any other intermediary involved in supplying the services of the Intermediary and the Intermediary Staff to the Client (now or in the future):
 - 4.3.1. processing the Intermediary Staff's personal data for purposes connected with the provision of the Intermediary Services and pursuant to this Agreement; and
 - 4.3.2. exporting and/or processing the Intermediary Staff's personal data in jurisdictions outside the European Economic Area for purposes connected with the performance of this Agreement.
- 4.4. Further to clause 3.7, the Intermediary warrants that the Intermediary Staff do not work under (or are not subject to the right of) supervision, direction or control of any person as to the manner in which they provide the Intermediary Services. The Intermediary further warrants that it shall advise the Employment Business in writing immediately that the Intermediary Staff work under (or are subject to the right of) supervision, direction or control of any person.

5. THE INTERMEDIARY'S OBLIGATIONS

- 5.1. The Intermediary agrees on its own part and on behalf of the Intermediary Staff as follows:
 - 5.1.1. to observe any relevant rules and regulations of the Client'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 Intermediary Staff;
 - 5.1.2. to take all reasonable steps to safeguard its own safety, the safety of the Intermediary Staff and the safety of any other person who may be affected by the actions of the Intermediary Staff whilst on the Assignment;
 - 5.1.3. 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;
 - 5.1.4. 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 Client's or the Employment Business' employees, business affairs, transactions or finances;
 - 5.1.5. not to engage in any conduct detrimental to the interests of the Employment Business and/or the Client which includes any conduct which could bring the Employment Business and/or the Client into disrepute and/or which results in the loss of custom or business for the Employment Business and/or the Client;
 - 5.1.6. not to commit any act or omission constituting unlawful discrimination against or harassment of any member of the Employment Business's or the Client's staff;
 - 5.1.7. not to sub-contract or assign to any third party any of the Intermediary Services which it is required to perform under the Assignment except in accordance with clause 3.5;
 - 5.1.8. to provide the Client and/or the Employment Business with any progress reports as may be requested from time to time;
 - 5.1.9. to notify the Employment Business forthwith in writing if it should become insolvent or if any of the circumstances set out in clauses 9.2.5 to 9.2.7 apply;

- 5.1.10. to confirm in writing whether or not the Intermediary Staff have 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;
 - 5.1.11. to comply with all relevant legal obligations, including but not limited to ITEPA, the NICs Legislation, VAT legislation and the Companies Acts and all statutory obligations;
 - 5.1.12. 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;
 - 5.1.13. to provide the Employment Business on request, with any information required to comply with Transparency Regulations;
 - 5.1.14. to notify the Employment Business 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;
 - 5.1.15. to update the Employment Business promptly where any of the information required under clause 5.1.12 to 5.1.14 changes; and
 - 5.1.16. to provide at its own cost, subject to any agreement to the contrary specified in the Assignment Letter all such necessary equipment as is reasonable for the adequate performance by the Intermediary Staff of the Intermediary Services.
- 5.2. If the Intermediary is unable for any reason to provide the Intermediary Services during the course of the Assignment, the Intermediary should inform the Employment Business as soon as is reasonably practicable but in any event, no later than 1 hour after it becomes aware of any event which renders it unable to provide the Intermediary Services so as to enable the Employment Business to discharge its obligations to the Client.
- 5.3. If, either before or during the course of an Assignment, the Intermediary becomes aware of any reason why it or the Intermediary Staff may not be suitable for an Assignment, the Intermediary shall notify the Employment Business without delay.
- 5.4. The Intermediary acknowledges that any breach of its obligations set out in this clause may cause the Employment Business to suffer Loss and that the Employment Business reserves the right to recover such Losses from the Intermediary by way of set off or deduction from any sums owed by the Employment Business to the Intermediary.

6. THE EMPLOYMENT BUSINESS'S OBLIGATIONS

- 6.1. Throughout the term of this Agreement the Employment Business will:
 - 6.1.1. pay the Intermediary the agreed Intermediary Fees in respect of the provision of the Intermediary Services in accordance with clause 8 below, subject to any right of set off or deduction in clause 5.4;
 - 6.1.2. provide the Intermediary with the information set out in the Assignment Letter in order for the Intermediary to arrange for the provision of the Intermediary Services; and
 - 6.1.3. advise the Intermediary of any health and safety information or advice which it receives from the Client which may affect the Intermediary Staff during the Assignment.

7. INVOICING

- 7.1. Upon completion of the Assignment, or as may be agreed and specified in the Assignment Letter, at the end of each week of the Assignment the Intermediary shall deliver to the Employment Business its invoice for the Intermediary Fees due from the Employment Business to the Intermediary giving a detailed breakdown showing the work performed and the time spent by the Intermediary in providing the Intermediary Services.
- 7.2. The Intermediary shall obtain the signature of an authorised representative of the Client as verification of execution of the provision of the Intermediary Service for each of its invoices.
- 7.3. The Intermediary's invoice must be received by the Employment Business by no later than 2pm on Tuesday following the week to which it relates. The Intermediary's invoice should bear the Intermediary's name, the name of the Intermediary Staff who provided the Intermediary Services to which the invoice relates, the Intermediary's company registration number and VAT number and should state any VAT due on the invoiced sum.
- 7.4. The Employment Business shall not be obliged to pay any fees to the Intermediary unless an invoice has been properly submitted by the Intermediary in accordance with this clause 7 and until the Client has verified the execution of the Assignment.

8. INTERMEDIARY FEES

- 8.1. The Employment Business will pay the Intermediary the Intermediary Fees within 7 days of receipt of the Intermediary's invoice subject to:
 - 8.1.1. the satisfactory performance of the Services;
 - 8.1.2. the Intermediary's compliance with this Agreement;
 - 8.1.3. the Employment Business's receipt of the Intermediary's invoice in accordance with clause 7 above.
- 8.2. The Intermediary shall be responsible for any PAYE Income Tax and National Insurance Contributions and any other taxes and deductions payable in respect of the Intermediary Staff for the Assignment (including any social fund contributions payable in any other Member State pursuant to a valid A1, E101 or E102 certificate issued to any of the Intermediary Staff).
- 8.3. The Employment Business will pay the Intermediary Fees to the Intermediary and not to any third party or member of the Intermediary Staff, any sub-contractor or assignee. The Employment Business will pay the Intermediary Fees into a UK business bank account only.
- 8.4. 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 Client does not require the Intermediary Services or otherwise in respect of holidays, illness or absence of the Intermediary Staff.
- 8.5. The Intermediary shall bear the cost of any training which the Intermediary Staff may require in order to perform the Intermediary Services.

9. TERM AND TERMINATION

- 9.1. This Agreement shall commence on the date set out in the Assignment Letter and shall continue until completion of the Intermediary Services to the reasonable satisfaction of the Client at which time this Agreement shall expire automatically unless previously terminated by either the Employment Business or the Intermediary giving the other party the period of notice specified in the attached Assignment Letter.
- 9.2. Notwithstanding clauses 9.1 and 9.3 of this Agreement, the Employment Business may without notice and without liability instruct the Intermediary to cease work on the Assignment at any time, where:
 - 9.2.1. the Intermediary has acted in breach of the rules and regulations applicable to third parties providing services to the Client; or
 - 9.2.2. the Intermediary has committed any serious or persistent breach of any of its obligations under this Agreement; or
 - 9.2.3. the Client reasonably believes that the Intermediary has not observed any condition of confidentiality from time to time; or
 - 9.2.4. the Client is dissatisfied with the Intermediary's provision of the Intermediary Services and has terminated the Assignment; or
 - 9.2.5. either the Client 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
 - 9.2.6. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Client or the Intermediary; or
 - 9.2.7. an order is made for the winding up of either the Client or the Intermediary, or where either the Client 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
 - 9.2.8. the Employment Business suspects or has notice that the Intermediary has not complied with any of the requirements of ITEPA, the NICs Legislation or VAT requirements; or
 - 9.2.9. any member of the Intermediary Staff is suspected of any fraud, dishonesty or serious misconduct; or
 - 9.2.10. the Intermediary is unable to perform the Intermediary Services for 2 days or more; or

- 9.2.11. the Employment Business knows or suspects that the Intermediary or the 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 Intermediary Services in breach of this Agreement; or
 - 9.2.12. either of the Client or the Intermediary fails to provide accurate and sufficient evidence that neither the Intermediary nor the 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 Intermediary Services; or
 - 9.2.13. the Intermediary fails to comply with clause 14.3; or
 - 9.2.14. the Employment Business knows or suspects that the Client is a Public Authority; or
 - 9.2.15. the Employment Business knows or suspects that either the Intermediary or the Intermediary Staff have breached the Data Protection Laws.
- 9.3. The Intermediary acknowledges that the continuation of the Assignment is subject to and conditioned by the continuation of the contract entered into between the Employment Business and the Client. In the event that the contract between the Employment Business and the Client is terminated for any reason the Assignment shall cease with immediate effect without liability to the Intermediary.
- 9.4. Failure by the Intermediary to give full and proper notice of termination as required in the Assignment Letter attached 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.

10. INTELLECTUAL PROPERTY RIGHTS

The Intermediary acknowledges that all copyright, trademarks, patents and other intellectual property rights deriving from the provision of the Intermediary Services, by the Intermediary, the Intermediary Staff and/or any third party to whom the Contract is 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 Intermediary and set out in the Assignment Letter. Accordingly the Intermediary shall (and shall procure that any relevant member of the Intermediary Staff 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 the Client's rights pursuant to this clause.

11. CONFIDENTIALITY

- 11.1. In order to protect the confidentiality and trade secrets of the Client and/or 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 its Intermediary Staff as follows:
- 11.1.1. not at any time whether during or after the Assignment (unless expressly so authorised by the Client 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 Confidential Information of the Client or the Employment Business with the exception of information already in the public domain;
 - 11.1.2. to deliver up to the Client or the Employment Business (as directed) at the end of the Assignment all documents and other materials belonging to the Client (and all copies) which are in its possession including documents and other materials created by it or the Intermediary Staff during the course of the Assignment;
 - 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 Client except when required to do so in the course of its duties under the Assignment in which event any such item shall belong to the Client or the Employment Business as appropriate.

12. COMPUTER EQUIPMENT WARRANTY

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

13. RESTRICTION

The Intermediary shall not and shall procure that the Intermediary Staff shall not during the Assignment or for a period of 6 months following the termination of the Assignment supply the services of the Intermediary Staff directly, or through any other person, firm or company, to any Client for whom it has carried out the Assignment at any time during the previous 6 months [save in the case of supply through an Employment Business or recruitment Intermediary with whom the Intermediary was also registered at the date of commencement of the Assignment].

14. CONTRACT MONITORING AND AUDITS

- 14.1. 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 Intermediary Staff supplied to provide the Intermediary Services including but not limited to ITEPA and the NICs legislation. The Employment Business will give the Intermediary 14 days' notice of such audit.
- 14.2. To assist the Employment Business in its audit the Intermediary will:
- 14.2.1. maintain such records as are necessary to comply with this Agreement and all statutory requirements in relation to all Intermediary Staff supplied to provide the Intermediary Services, and will provide copies of the same to the Employment Business on request;
 - 14.2.2. provide the Employment Business with access to its premises and all records relating to all Intermediary Staff supplied to provide the Intermediary Services.
- 14.3. 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 in writing 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 can terminate this Agreement in accordance with clause 9.

15. LIABILITY

- 15.1. The Intermediary shall:
- 15.1.1. be liable for any and all Losses or injury to any party resulting from the deliberate and/or negligent acts or omissions of the Intermediary or Intermediary Staff during an Assignment, or for the acts or omissions of any assignee or sub-contractor to whom the Intermediary assigns or sub-contracts the performance of the Intermediary Services, during an Assignment;
 - 15.1.2. 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 Intermediary Staff. The Intermediary shall maintain such insurances 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;
 - 15.1.3. be liable for any defects arising in relation to the Intermediary Services and shall rectify at its own cost such defects as may be capable of remedy within a reasonable period from notification of such defects by either the Employment Business or the Client; and
 - 15.1.4. for any breaches of the Data Protection Laws by the Intermediary or the Intermediary Staff.

16. INDEMNITY

- 16.1. Save to the extent any such Losses result solely from any act or omission of the Employment Business or the Client, 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 any third party;
- 16.1.1 (including specifically, but without limitation, HM Revenue and Customs and any successor, equivalent or related body pursuant to the IR35 Legislation and/or any of the provisions of ITEPA or the NICs Legislation (and/or any supporting or consequential secondary legislation relating thereto)); or
 - 16.1.2 arising out of any non-compliance with, and/ or as a result of any breach of this Agreement or the Data Protection Laws by either the Intermediary or the Intermediary Staff.

17. 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.

18. 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.

19. DISCLAIMER

The Employment Business makes no representation nor does it accept any responsibility for ensuring that the terms of this Agreement are an accurate reflection of the relationship between the Client and the Intermediary. Furthermore the Employment Business accepts no liability to indemnify the Intermediary for any Losses incurred by the Intermediary whether by reason of tax or other statutory or contractual liability to any third party arising from the Assignment.

20. THIRD PARTY RIGHTS

20.1. Save as set out in clause 20.2, none of the provisions of this Agreement is intended to be for the benefit of or enforceable by third parties (other than permitted assignees who shall be entitled to enforce the provisions of this Agreement as if original parties to it) and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

20.2. The Client shall be entitled to rely on and enforce the provisions of clause 3.4 and the indemnities given by the Intermediary in favour of the Client, notwithstanding that the Client is not a party to this Agreement.

21. GOVERNING LAW AND JURISDICTION

This Agreement shall be construed in accordance with the laws of England & Wales and all disputes, claims or proceedings between the parties relating to the validity, construction or performance of this Agreement shall be subject to the exclusive jurisdiction of the Courts of England & Wales.

Signed for and on behalf of the Employment Business

[print name here]

Signed for and on behalf of (the Intermediary)

[print name here]

I am authorised to sign this Agreement for and on behalf of the Intermediary.

Date

