

CONTRACT 8: TERMS OF ENGAGEMENT WITH A LIMITED COMPANY CONTRACTOR WHO HAS NOT OPTED OUT OF THE CONDUCT REGULATIONS (WITHIN IR35)

November 2011

THE PARTIES

- (1) *[Insert Intermediary's name]* Limited (registered company no. *[insert registered company no.]*) *[trading as insert trading name if different]* of *[address – see Note 1 (re registered office or trading address)]* (“**the Intermediary**”). *[see Note 2 if the Intermediary is a limited liability partnership]*
- (2) Perfect Links LTD (registered company no.7498837 of Suite 3 Room 4 109 George Lane, South Woodford E18 1AN (“**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:

“ Agency Worker ”	means such of the Intermediary’s employees, workers, officers or representatives supplied to provide the Intermediary Services;
“ Agency Workers Regulations ”	means the Agency Workers Regulations 2010
“ 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 provide the Intermediary Services to the Hirer;
“ Assignment Details Form ”	means written confirmation of the Assignment details set out in clause 6.2;
“ 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, 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;

“Engagement”

means the engagement, 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:

a.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

a.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, including the rate of pay which will be paid for each hour worked during an Assignment (to the nearest quarter hour) to be paid weekly in arrears as set out in the relevant Assignment Details Form;
“IR35 Legislation”	means Chapter 8 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 and the Social Security Contributions (Intermediaries) Regulations 2000 (or the equivalent legislation in Northern Ireland);
“Losses”	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;
“Minimum Rate”	means £8 hour being the minimum rate of pay that the Employment Business reasonably expects to achieve, for all hours worked by the Intermediary;
“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 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 Period”	means (a) the period of 8 weeks commencing on the day after the <u>last</u> 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 <u>first</u> 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;

“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 [insert the type of work you expect to supply the Intermediary into]; and

“Working Time Regulations” means the Working Time Regulations

- 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 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.
- 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 Agency Worker 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 (as amended) 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. 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 should it fail to offer opportunities to work to the Intermediary.

- 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 of complying with all statutory and legal requirements relating to the Agency Worker (including the payment 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.

- 3.4. Nothing in this Agreement shall render any Agency Worker an employee or worker of either the Employment Business or the Hirer. The Intermediary shall ensure that the Agency Worker 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 Agency Worker 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.

- 3.5. If before or during an Assignment or during the Relevant Period the Hirer wishes to Engage the Intermediary or any Agency Worker 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 Agency Worker (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 Agency Worker to a third party (other than another employment business) who subsequently Engages the Intermediary or any Agency Worker before or during an Assignment or within the Relevant Period.

- 3.6. If the Agency Worker 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 Agency Worker is entitled to any terms and conditions relating to the duration of working time, night work, rest periods and/or rest breaks under the Agency Workers Regulations 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 Agency Worker any such entitlements.

3.7. If the Intermediary is a Temporary Work Agency, it will comply with the Agency Workers Regulations in all relevant respects.

3.8. If the Intermediary is a Temporary Work Agency, it will notify the Employment Business as soon as possible prior to the commencement of the first Assignment under this Agreement if the Agency Worker has a permanent contract of employment with the Intermediary that satisfies the requirements of Regulation 10 of the Agency Workers Regulations and immediately if and when any such contract is terminated.

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 Agency Worker has the necessary skills and qualifications to provide the Intermediary Services;

4.1.3. that the Intermediary and the Agency Worker providing the Intermediary Services have not opted out of the Conduct Regulations and that it will only supply Agency Workers to perform the Intermediary Services who have not opted out of the Conduct Regulations; and

4.2. The Intermediary warrants to the Employment Business that the Agency Worker has consented in writing to the Employment Business, any other intermediary involved in supplying the services of the Intermediary and the Agency Worker to the Hirer (now or in the future) and the Hirer:

4.2.1. processing the Agency Worker's personal data for purposes connected with the provision of the Intermediary Services and pursuant to this Agreement; and

4.2.2. exporting and/or processing the Agency Worker's personal data in jurisdictions outside the European Economic Area for purposes connected with the performance of this Agreement.

5. INTERMEDIARY'S OBLIGATIONS

5.1. The Intermediary agrees on its own part and on behalf of the Agency Worker if it accepts any Assignment offered by the Employment Business:

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

5.1.2. 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 Agency Worker;

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

- 5.1.4. 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;
 - 5.1.5. not at any time 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;
 - 5.1.6. 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;
 - 5.1.7. not commit any act or omission constituting unlawful discrimination against or harassment of any member of the Employment Business' or the Hirer's staff;
 - 5.1.8. not to sub-contract or assign to any third party any of the Intermediary Services which it is required to perform under any Assignment;
 - 5.1.9. to furnish the Hirer and/or the Employment Business with any progress reports as may be requested from time to time;
 - 5.1.10. to notify the Employment Business forthwith in writing if it should become insolvent, or if any of the arrangements set out in clauses 9.2.5 to 9.2.7 apply;
 - 5.1.11. to comply with all the requirements of VAT legislation and the Companies Acts;
 - 5.1.12. to comply with all relevant legal obligations, including but not limited to statutory obligations.
- 5.2. 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:
- 5.2.1. inform the Employment Business of any Calendar Weeks between 1 October 2011 and prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment in which the Agency Worker has worked in the same or a similar role with the relevant Hirer via any third party and which the Intermediary and/or the Agency Worker believes count or may count toward the Qualifying Period; and
 - 5.2.2. 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
 - 5.2.3. inform the Employment Business if, since 1 October 2011, the Agency Worker has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment:
 - 5.2.3.1. completed two or more assignments with the Hirer;
 - 5.2.3.2. completed at least one assignment with the Hirer and one or more earlier assignments with any member of the Hirer's Group; and/or

5.2.3.3. 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.

5.3. If the Agency Worker 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 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.

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

5.5. 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.

6. OBLIGATIONS OF THE EMPLOYMENT BUSINESS

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 (excluding Saturday, Sunday and any Public or Bank Holiday) 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.

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. This 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 Agency Worker who provided the Intermediary Services, the Intermediary's company registration number and VAT number, and should state any VAT due on the invoiced sum.
- 7.2. Subject to the Intermediary complying with the provisions of this clause 7 the Employment Business shall pay the 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, such timesheet should be received by the Employment Business no later than 12pm on Tuesday 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 Agency Worker 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 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. Subject to clause 8.9, if the Agency Worker:
- 8.2.1. has completed the Qualifying Period on the start date of the relevant Assignment, the Employment Business reserves the right to vary the Intermediary Fees if there is any variation in (a) (pay) of the Relevant Terms and Conditions; or
- 8.2.2. completes the Qualifying Period during the relevant Assignment, in order to comply with the equal treatment provisions of the Agency Workers Regulations in relation to the Agency Worker in respect of pay, the Employment Business reserves the right to vary the Intermediary Fees from the day after the date on which the Agency Worker completes the Qualifying Period and thereafter if there is any variation in (a) (pay) of the Relevant Terms and Conditions.

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 8.2, the Intermediary will,

at the same time, make the same variations to the corresponding payments the Intermediary makes to the Agency Worker.

- 8.3. Under the Agency Workers Regulations, on completion of the Qualifying Period the Agency Worker 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 Agency Worker has a permanent contract of employment with the Intermediary that satisfies the requirements of Regulation 10 of the Agency Workers Regulations) and/or unpaid annual leave in addition to the Agency Worker'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 Agency Worker 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 Agency Worker.
- 8.4. Subject to clause 8.9, if the Agency Worker has completed the Qualifying Period on the start date of the relevant Assignment or following completion of the Qualifying Period during the relevant Assignment, the Agency Worker may be entitled to receive a bonus. The Intermediary will, and will procure that the Agency Worker will, comply with any requirements of the Employment Business and/or the Hirer relating to the assessment of the Agency Worker's performance for the purpose of determining whether or not the Agency Worker is entitled to a bonus and the amount of any such bonus. If, subject to satisfying the relevant criteria, the Agency Worker 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 Agency Worker.
- 8.5. 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 the Agency Worker [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 Agency Worker] for any Assignment.
- 8.6. All payments due from the Employment Business will be made to the Intermediary and not to any third party or Agency Worker, any sub-contractor or assignee.
- 8.7. 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 holidays (save as where may be the case in accordance with clause 8.3), illness or absence of the Agency Worker.
- 8.8. The Intermediary shall bear the cost of any training which the Agency Worker may require in order to perform the Intermediary Services.
- 8.9. Clauses 8.2 and 8.4 will not apply where the Intermediary is a Temporary Work Agency and it is agreed in the relevant Assignment Details Form that the Agency Worker has a permanent contract of employment with the Intermediary that satisfies the requirements of Regulation 10 of the Agency Workers Regulations.

9. TERM AND TERMINATION

- 9.1. An Assignment may be terminated by either the Employment Business or the Intermediary by giving the other party in writing the period of notice specified in the relevant Assignment Details Form.
- 9.2. Notwithstanding clauses 9.1 and 9.3 of this Agreement, where required by the Hirer, 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 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
 - 9.2.2. the Intermediary has committed any serious or persistent breach of any of its obligations under this Agreement; or
 - 9.2.3. the Hirer reasonably believes that the Intermediary has not observed any condition of confidentiality from time to time; or
 - 9.2.4. the Hirer is dissatisfied with the Intermediary's provision of the Intermediary Services and has terminated the Assignment; or
 - 9.2.5. 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
 - 9.2.6. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Hirer or the Intermediary; or
 - 9.2.7. 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
 - 9.2.8. the Intermediary or the Agency Worker is suspected of any fraud, dishonesty or serious misconduct; or
 - 9.2.9. the Intermediary is unable to perform the Intermediary Services for 2 days or more.
- 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 terminated for any reason the Assignment shall cease with immediate effect without liability to the Intermediary.
- 9.4. 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.

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 Agency Worker for the Hirer during the Assignment shall belong to the Hirer. Accordingly the

Intermediary shall (and shall procure that the Agency Worker 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 Agency Worker 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 Agency Worker 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 Agency Worker for the purpose of providing the Intermediary Services contains anti-virus protection with the latest released upgrade from time to time.

13. LIABILITY

13.1. The Intermediary shall:

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

13.1.2. ensure the provision of 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 Agency Worker during an Assignment and shall make a copy of the policy available to the Employment Business upon request.

14. 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 any third party (including specifically, but without limitation, Her Majesty's Revenue and Customs and any successor, equivalent or related body pursuant to the IR35 Legislation 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).

15. 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.

16. 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.

17. THIRD PARTY RIGHTS

- 17.1. Save as set out in clause 17.2, 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.
- 17.2. The Hirer shall be entitled to rely on and enforce the indemnities in clause 3.8 given by the Intermediary in favour of the Hirer, notwithstanding that the Hirer is not a party to this Agreement.

18. GOVERNING LAW AND JURISDICTION

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

Signed for and on behalf of the Employment Business

[print name here]

Signed for and on behalf of [insert name of limited company or limited liability partnership] Ltd. (the Intermediary

print name here]

I am authorised to sign these Terms for and on behalf of the Intermediary.

Date

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 Agency Worker has started working during an assignment and there is a break, either between assignments or during an assignment, when the Agency Worker 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 Agency Worker 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 Agency Worker 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 Agency Worker returns to work;
 - (iv) wholly for the purpose of taking time off or leave, whether statutory or contractual, to which the Agency Worker is otherwise entitled which is:
 - iv.i. ordinary, compulsory or additional maternity leave;
 - iv.ii. ordinary or additional adoption leave;
 - iv.iii. ordinary or additional paternity leave;
 - iv.iv. time off or other leave not listed in paragraphs (iv)i, ii, or iii above; or
 - iv.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 Agency Worker 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 Agency Worker returns to work in the same role with the Hirer, any weeks during which the Agency Worker 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 Agency Worker works for the Hirer after the break. In addition, when calculating the number of weeks during which the Agency Worker has worked, where the Agency Worker 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 Agency Worker 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 Agency Worker 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 Agency Workers Regulations being a person engaged in the economic activity, public or private, whether or not operating for profit, and whether or not carrying on such activity in conjunction with others, of:

- (a) supplying individuals to work temporarily for and under the supervision and direction of hirers; or

(b) paying for, or receiving or forwarding payment for, the services of individuals who are supplied to work temporarily for and under the supervision and direction of hirers.

Notwithstanding paragraph (b) of this definition a person is not a Temporary Work Agency if the person is engaged in the economic activity of paying for, or receiving or forwarding payments for, the services of individuals regardless of whether the individuals are supplied to work for hirers. For the purpose of this definition, a "hirer" means a person engaged in economic activity, public or private, whether or not operating for profit, to whom individuals are supplied, to work temporarily for and under the supervision and direction of that person.