

CONTRACT FOR SERVICES – INTERMEDIARY (UMBRELLA) COMPANY

This Agreement is made on **DATE** (Commencement Date) and is made between:

- (1) **XXXXXX** Limited (Registered in England & Wales No. **XXXXXX**) whose registered office is at **XXXXXXXXX** (**Company**); and
- (2) **XXXXXX** Limited (Registered in England & Wales No. **XXXXXX**) whose registered office is at **XXXXXXXXX** (**Intermediary**)

Each one a party and together referred to as the parties

IT IS AGREED as follows:

1. DEFINITIONS & INTERPRETATION

1.1. In this Agreement, the following definitions apply:

Assignment means the temporary role carried out by the Temporary Resource for the Client;

Assignment Schedule means the document issued by the Company with details of the Assignment and any Special Conditions;

AWR means the Agency Workers Regulations 2010;

Best Industry Practice means the skill, diligence, prudence, foresight and judgment which would be expected from a highly skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances, applying the best standards currently applied in their industry;

Client means the person, firm or corporate body (together with any holding, subsidiary or associated company) identified in the Assignment Schedule and, where appropriate, includes any client of the Client;

Conduct Regulations means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;

Confidential Information means all commercial, financial, marketing, technical or other information, trade secrets, knowhow or data of whatever nature relating to the Client or the Company and their business or affairs, in any form whatsoever, which is provided to the Temporary Resource or which the Temporary Resource becomes aware of during an Assignment but excluding any information in the public domain, unless placed in the public domain by the Temporary Resource in breach of confidentiality;

Data means personal data and special/sensitive personal data within the meaning of the Data Protection Legislation;

Data Protection Legislation means (i) the Data Protection Act 2018, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the Data Protection Act 2018 or the GDPR;

Intermediary Fee means the fee payable by the Company to the Intermediary in respect of the Assignment.

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

Opted-Out means opted-out of the Conduct Regulations in accordance with Regulation 32(9);

Qualifying Period means the period defined within regulation 7 of the AWR;

Relevant Period means the later of (i) the 8 week period commencing on the day after the last day on which the Temporary Resource was supplied by the Company to the Client; or (ii) the 14 week period commencing on the first day on which the Temporary Resource was supplied by the Company to the Client 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) between Assignments;

Reporting Obligations means the Employment Intermediaries reporting obligations under s716B of ITEPA;

Restricted Period means the six-month period following the end of the Assignment;

Special Conditions means any conditions, obligations or requirements which are specific to an Assignment and which are set out in an Assignment Schedule;

Tax means any PAYE Income Tax and National Insurance Contributions including, where applicable, any equivalent taxes and social security contributions in the country in which the Assignment is performed;

Temporary Resource means the individual supplied by the Intermediary to perform the Assignment on behalf of the Intermediary; and

Timesheet means the document detailing the days and times in which the Temporary Resource has performed the Assignment.

1.2. Unless the context otherwise requires, words in the singular shall include the plural and words in the plural shall include the singular.

1.3. Unless the context otherwise requires, a reference to one gender shall include the other genders.

1.4. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.5. The headings in this Agreement are included for convenience and shall not affect the interpretation of the clauses to which they relate.

2. BASIS OF AGREEMENT

2.1. This Agreement constitutes the entire agreement between the Company and the Intermediary in relation to its subject matter to the exclusion of any additional or alternative terms proposed by the Intermediary.

2.2. On commencement of the Assignment, the Company shall issue an Assignment Schedule to the Intermediary and the Intermediary must notify the Company without delay if it considers any information in the Assignment Schedule to be incorrect. If there is a conflict or inconsistency between this Agreement and the Assignment Schedule, the Assignment Schedule shall take priority.

- 2.3. The Intermediary warrants that, in agreeing to enter into this Agreement, it has not relied on any statement or representation made by the Company.
- 2.4. No variation or alteration to this Agreement shall be valid unless the agreed details of such variation are set out in writing and signed by a director of the Company.
- 2.5. Nothing in this Agreement shall confer approved or preferred supplier status on the Intermediary and the Intermediary must not advertise or state to any third party that it is an approved or preferred supplier to the Company without the written consent of a director of the Company.
- 2.6. For the purposes of the Conduct Regulations, the Company shall act as an employment business.

3. TEMPORARY RESOURCE STATUS

- 3.1. The Intermediary shall provide the Temporary Resource to perform the Assignment and shall ensure that:
 - 3.1.1. the Temporary Resource is directly employed by the Intermediary and not engaged on a self-employed basis;
 - 3.1.2. the Temporary Resource is entitled to live and work in the United Kingdom or such other location in which the Assignment is performed;
 - 3.1.3. the Temporary Resource is paid not less than the National Minimum Wage or, where applicable, the National Living Wage, for each hour worked;
 - 3.1.4. the Intermediary makes deductions for Tax from its payments to the Temporary Resource and accounts to HMRC (or the appropriate authority) in respect of such Tax; and
 - 3.1.5. any travel and subsistence payments which are made by the Intermediary to the Temporary Resource comply in all respects with the Finance Act 2016 and any other relevant legislation.
- 3.2. The Company and the Intermediary intend that there shall at no time be any direct contractual or employment relationship between the Temporary Resource and the Company or between the Temporary Resource and the Client.
- 3.3. The Temporary Resource shall be deemed to be an agency worker within the meaning of the AWR and subject to the supervision, direction and control of the Client at all times unless otherwise agreed in writing between the Company and the Intermediary.
- 3.4. If the AWR is applicable to the Assignment, following completion of the Qualifying Period:
 - 3.4.1. the Company shall request information from the Client about the working and employment conditions that are applicable to comparable individuals in the Client's organisation and provide such information to the Intermediary on receipt; and
 - 3.4.2. the Intermediary shall take all appropriate steps to ensure that the Temporary Resource receives equal treatment in respect of any relevant terms and conditions within the meaning of the AWR and shall notify the Company without delay if the Intermediary is unable to do so for any reason.
- 3.5. The Intermediary Opt-Outs of the Conduct Regulations and shall notify the Company without delay if the Temporary Resource has Opted-Out.

4. UMBRELLA COMPANY'S OBLIGATIONS & WARRANTIES

- 4.1. The Intermediary shall ensure that the Temporary Resource:
 - 4.1.1. does not engage in any conduct detrimental to the interests of the Company or the Client;
 - 4.1.2. performs the Assignment in accordance with Best Industry Practice;
 - 4.1.3. adheres to all applicable laws, statutes and regulations in relation to the Assignment;
 - 4.1.4. complies with any Client policies and procedures to the extent that they are relevant to the Temporary Resource;
 - 4.1.5. takes all necessary steps to safeguard their own safety and the safety of any third party during the Assignment;
 - 4.1.6. notifies the Company or the Client as soon as reasonably practicable on any day that the Temporary Resource is unavailable to perform the Assignment;
 - 4.1.7. accurately records on a Timesheet the hours worked by the Temporary Resource each week;
 - 4.1.8. does not hold himself out to be an agent of the Company or the Client, save to the extent that the Temporary Resource is expressly authorised to act on behalf of the Client in the course of the Assignment;
 - 4.1.9. does not introduce any computer virus or other malware into any computer equipment or network owned or used by the Company or the Client and ensures that any computer equipment owned by the Temporary Resource which is used for the Assignment is protected by up-to-date anti-virus protection; and
 - 4.1.10. does not 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 performing the Assignment, in which event any such item shall remain the legal property of the Client.
- 4.2. The Intermediary must ensure that at the end of the Assignment or at any time on demand, the Temporary Resource returns to the Company or the Client as appropriate all property of the Company or the Client including, without limitation, all equipment, tools, PPE, documents, security passes, electronic storage devices and keys.
- 4.3. The Intermediary warrants that:
 - 4.3.1. it is an independent supplier and is responsible for complying with all statutory and legal requirements relating to the Temporary Resource's employment and remuneration;
 - 4.3.2. it is neither a Managed Service Company nor a Managed Service Company Provider within the meaning of Chapter 9 of ITEPA;
 - 4.3.3. it is neither based offshore nor is it ultimately subject to the control of any person who is registered, domiciled or based offshore;
 - 4.3.4. it shall engage the Temporary Resource directly and not through any third party; and

- 4.3.5. it has taken all reasonable steps to comply with the Modern Slavery Act 2015 and prevent slavery and human trafficking in its business.
- 4.4. The Intermediary shall provide to the Company within five working days of being requested:
- 4.4.1. written confirmation of the deductions for Tax which the Intermediary has made from its payments to the Temporary Resource;
- 4.4.2. reasonable evidence that the Tax referred to in clause 4.4.1 has been paid to HMRC by the Intermediary; and
- 4.4.3. all such information as the Company shall require to comply with the Reporting Obligations.
- 4.5. The Intermediary must notify the Company in writing and without delay if the Intermediary ceases trading, becomes insolvent, is dissolved or is subject to a winding up petition or if the Intermediary learns that the Temporary Resource has become bankrupt.
- 4.6. The Intermediary shall monitor the hours worked by the Temporary Resource, using all reasonable endeavours to ensure that such hours do not breach the Working Time Regulations 1998 (WTR) and, if the Intermediary believes that the Temporary Resource's working hours have breached or are likely to breach the WTR, the Intermediary shall notify the Company without delay.

5. TIMESHETS, INVOICING & PAYMENTS

- 5.1. The Intermediary shall ensure that the Temporary Resource obtains the signature or electronic approval of an authorised representative of the Client on a Timesheet in a format specified by the Company and submits the Timesheet to the Company as soon as practicable in the week following the week to which it relates.
- 5.2. The Intermediary warrants that it shall enter into a self-billing agreement with the Company, entitling the Company to raise its own invoices based on the approved Timesheet.
- 5.3. Subject to clause 5.4, the Company will pay the Intermediary Fee within three working days of receiving the approved Timesheet.
- 5.4. The Company shall not be obliged to pay the Intermediary Fee to the Intermediary unless:
- 5.4.1. the Intermediary has provided adequate information for the Company to raise a self-billing invoice;
- 5.4.2. subject to clause 5.5, the Client has duly authorised or signed the relevant Timesheet; and
- 5.4.3. the hours shown on the Timesheet are accurate.
- 5.5. If the Temporary Resource has not Opted Out:
- 5.5.1. clause 5.4.2 shall not apply but the Company shall not be obliged to pay the Intermediary Fee until the Company has contacted the Client and established the hours which were actually worked by the Temporary Resource; and
- 5.5.2. the Company undertakes to pay the Intermediary for all time worked by the Temporary Resource, whether or not it is paid or expecting to be paid by the Client for such time.
- 5.6. The Company shall not pay the Intermediary Fee for any time in which the Assignment is not performed and, if the Temporary Resource is legally entitled to be paid for any such period, the Intermediary shall bear the cost for such period.
- 5.7. The Intermediary acknowledges that the Client may terminate the Assignment within the first 4 hours without charge if the Client, acting reasonably, is dissatisfied with the performance of the Temporary Resource. Subject to clause 5.5.2, the Intermediary shall bear the cost of remunerating the Temporary Resource for such time.
- 5.8. Unless stated in the Assignment Schedule, the Company shall not pay any expenses incurred by the Temporary Resource in the course of the Assignment. If any expenses are payable, such payments shall be subject to the Temporary Resource providing supporting receipts and the Client authorising such expenses payments in writing.
- 5.9. If a sum of money is recoverable from or payable by the Intermediary in relation to:
- 5.9.1. a previous overpayment; or
- 5.9.2. any sum that the Intermediary is liable to pay to the Company under this Agreement;
- the Company may deduct that sum from any amount due or which is at any later time due to the Intermediary.

6. TERMINATION

- 6.1. Subject to clause 6.2, the Company, the Intermediary or the Temporary Resource (acting on behalf of the Intermediary) may terminate the Assignment by giving the notice, if any, specified in the Assignment Schedule.
- 6.2. The Company may terminate the Assignment without notice and without liability if:
- 6.2.1. the Intermediary has committed a serious or persistent breach of its obligations under this Agreement, is unable to comply with any Special Condition, undergoes a change of control or becomes insolvent;
- 6.2.2. the Temporary Resource refuses or fails to perform the Assignment; or
- 6.2.3. the Client is dissatisfied with the conduct, performance or suitability of the Temporary Resource.
- 6.3. The Company shall use reasonable endeavours to ensure that the Client observes any notice period agreed between the parties but shall not be liable to the Intermediary for any failure by the Client to give the notice specified in the Assignment Schedule.
- 6.4. On termination of the Assignment, howsoever arising, the Company may elect to engage the Temporary Resource directly or through any third party. The Intermediary shall do nothing to prevent such engagement by the Company.
- 6.5. This Agreement shall terminate upon the Assignment ending and clauses which expressly or by implication have effect after termination shall continue in full force and effect.

7. CONFIDENTIALITY & INTELLECTUAL PROPERTY

- 7.1. The Intermediary shall ensure that the Temporary Resource:
- 7.1.1. does not at any time, whether during or after an Assignment disclose to any person or to make use of any Confidential Information, save as necessary for the performance of the Assignment;
 - 7.1.2. delivers up to the Client at the end of an Assignment all documents and materials, in any format whatsoever, which belong to the Client and are in the Temporary Resource's possession or under the Temporary Resource's control including documents and materials created by the Temporary Resource during the course of the Assignment; and
 - 7.1.3. does not at any time make any copy, abstract, summary or précis of the whole or any part of any document or material belonging to the Client except when required to do so in the course an Assignment, in which event any such item shall belong to the Client.
- 7.2. The Intermediary shall ensure that the Temporary Resource:
- 7.2.1. without charge, assigns to the Client and waives all moral rights in any and all Intellectual Property arising out of or in connection with the Assignment;
 - 7.2.2. takes all such steps as the Client may require to effectively vest such Intellectual Property in the Client or such third party as the Client may specify (whether before or after the termination of this Agreement);
 - 7.2.3. promptly discloses to the Client any idea, method, invention, discovery, design, concept or other work made or created by the Temporary Resource in connection with the Assignment; and
 - 7.2.4. does not breach of the intellectual property rights of any third party when performing the Assignment.

8. DATA PROTECTION

- 8.1. The Intermediary acknowledges that, for the purpose of the Data Protection Legislation, both the Intermediary and the Company shall act as independent data controllers in respect of any Data relating to the Temporary Resource and shall each provide, upon request, all such information as the other party shall require to demonstrate their compliance with the Data Protection Legislation.
- 8.2. Notwithstanding its status as a data controller, the Intermediary shall notify the Company, without delay and in any event within 48 hours, if any Data relating to any Temporary Resource is subject to a data breach and shall provide such information as the Company shall reasonably request in respect of such data breach.
- 8.3. The Intermediary warrants that it has implemented the appropriate technical and organisational security and confidentiality measures to ensure the security and confidentiality of Data, and shall regularly update such measures, to ensure a level of security appropriate to the risk related the processing of such Data and to protect such Data from any unauthorised or unlawful processing, accidental loss, alteration, destruction or damage.
- 8.4. The Intermediary shall procure that the Temporary Resource complies with all Data Protection Legislation when handling any Data in the course of an Assignment and:
- 8.4.1. complies with such rules and processes as the Client may specify in relation to the processing of Data;
 - 8.4.2. does not use any such Data for any purpose other than the proper performance of the Assignment;
 - 8.4.3. delivers up such Data to the Client upon demand and does not retain any copy, extract or précis of such Data in any format for any reason; and
 - 8.4.4. notifies the Client without delay in the event of any accidental loss, alteration, destruction or damage to the Data or otherwise in respect of any breach of data security.

9. AUDIT RIGHTS

- 9.1. The Intermediary must provide on demand and without delay all such documents as may be required by the Company including, without limitation, any contract, right to work and identification document, payslip, remittance advice, RTI return, P11d and P60 relating to any Temporary Resource to demonstrate that the Intermediary has:
- 9.1.1. complied with its legal and contractual obligations;
 - 9.1.2. correctly deducted and accounted for Tax in respect of each Temporary Resource.
- 9.2. The Intermediary must ensure that any information which is sent by the Intermediary to the Company electronically pursuant to this clause is encrypted or password protected.
- 9.3. The Intermediary acknowledges that the Company may share with the Client any information provided by the Intermediary pursuant to clause 9.1.
- 9.4. The Company may from time to time conduct an on-site audit of the Intermediary's business records which are relevant to the Temporary Resource or to the Intermediary's compliance with its legal and contractual obligations. The Company shall use reasonable endeavours to provide no less than 72 hours' notice of such audit and the Intermediary must, without charge, provide all such assistance which the Company shall reasonably require during the audit.

10. BRIBERY & ANTI-CORRUPTION

- 10.1. The Client and the Company warrant that they shall:
- 10.1.1. comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010; and
 - 10.1.2. promptly notify the other party of any request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement.

10.2. The Intermediary must neither give nor offer to give any incentive, reward, inducement, commission or gift of any kind to any employee of the Company without the prior written consent of a director of the Company.

11. LIABILITY & INDEMNITY

11.1. The Intermediary shall be liable for and shall indemnify the Company and the Client for any losses, damages, costs, fees (including legal fees), claims (whether actual or threatened) and expenses suffered or incurred by the Company and the Client which arise out of or in connection with the Intermediary's breach of any obligation under this Agreement, negligence or other tortious act or breach of statutory duty.

11.2. The Intermediary shall indemnify the Company and the Client for all losses, damages, costs, fees (including legal fees) and expenses suffered or incurred as a result of the Temporary Resource bringing a claim (whether actual or threatened) against the Company or the Client:

11.2.1. in the Employment Tribunal;

11.2.2. on the basis that the Temporary Resource has transferred to the Company, the Client or any third party under TUPE; or

11.2.3. on the basis that there is a direct contractual relationship between the Temporary Resource and the Company or between the Temporary Resource and the Client.

11.3. The Intermediary shall indemnify the Company and the Client for any liability for Tax (including any fines, penalties or interest) which may be imposed upon or assessed against the Company or the Client in relation to any Temporary Resource.

11.4. Subject to clause 11.5, the liability of the Company to the Intermediary in respect of any claim or series of claims arising out of or in connection with this Agreement shall be limited to the Intermediary Fees paid by the Company to the Intermediary in the three month period immediately prior to such claim arising.

11.5. Neither party intends to limit their liability for death or personal injury arising from their negligence, for fraud or fraudulent misrepresentation or for any other claim which may not be limited or excluded by law.

12. INSURANCE

12.1. The Intermediary shall take out and maintain throughout the term of the Assignment and, in respect of Professional Indemnity insurance, for six years following termination of the Assignment:

12.1.1. Employers Liability Insurance with cover of not less than £5,000,000 per claim;

12.1.2. Public Liability Insurance with cover of not less than £2,000,000 per claim; and

12.1.3. Professional Indemnity Insurance with cover of not less than £1,000,000 per claim.

12.2. The Intermediary warrants that the insurance policies referred to in clause 12.1 shall cover the Temporary Resource's activities when performing the Assignment.

12.3. The Intermediary shall provide to the Company upon commencement of this Agreement and at any time upon being requested by the Company a copy of the insurance policy schedule and certificate for each insurance policy referred to in clause 12.1.

13. PROTECTION OF COMMERCIAL INTERESTS

13.1. If the Temporary Resource has Opted Out, the Intermediary shall ensure that the Temporary Resource does not, whether directly or indirectly, provide to the Client any services of the same or a similar nature to those provided in the course of the Assignment other than through the Company at any time during the Assignment or the Restricted Period.

13.2. The Intermediary shall not during the term of this Agreement or within six months of its termination supply or offer to supply the Temporary Resource directly to the Client without the prior written consent of the Company, such consent to be granted at the Company's entire discretion.

14. GENERAL

14.1. Any failure by the Company to enforce any rights under this Agreement shall not be deemed to be a waiver of such rights or of the right to enforce this Agreement subsequently.

14.2. If any provision in this Agreement is determined by a competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the Agreement, which shall continue to be valid to the fullest extent permitted by law.

14.3. Subject to clause 14.4, neither party intends for these Terms to be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.

14.4. The Client shall have the benefit of a third party right to enforce clauses 7 and 11 directly against the Intermediary.

14.5. This Agreement shall be interpreted in accordance with English law and each party agrees that the courts of England & Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation.

Agreed with effect from the Commencement Date and signed on behalf of the Intermediary:

Signed:	
Print Name:	
Position:	
Date:	

TEMPORARY WORKER ASSIGNMENT SCHEDULE (INTERMEDIARY)

Intermediary Company & Agency Worker Details:

Agency Worker Name:	
Intermediary Company Name:	
Opted Out of Working Time Regulations	Yes / No
Opted Out of Conduct Regulations	Yes / No
Experience, training, qualifications or authorisations required by Client, law or any professional body for Agency Worker to perform the assignment:	

Client Details:

Client Name:	
Contact Name at Client:	
Client Address:	

Assignment Details:

Type of Work:	i.e. Job Title
Location:	
Estimated daily hours of work:	
Start date of assignment:	
Anticipated end date of assignment:	
Notice for Client/Employment Business to terminate assignment:	
Notice for Intermediary/Agency Worker to terminate assignment:	
Health & Safety risks disclosed by Client and steps taken to prevent or control such risks:	
Special Conditions/Other Information:	
Intermediary Fee:	£ per day/hour
Expenses Payable:	
Payment Frequency:	Weekly
Applicable Terms:	Contract For Services – Intermediary (Umbrella) Company