Standard terms and conditions for the supply of services

between

PLEASE FILL IN

and

CUCUMBER RECRUITMENT LIMITED



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This agreement is dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Parties

1. **[FULL COMPANY NAME**] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Client).
2. **CUCUMBER RECRUITMENT LIMITED** incorporated and registered in England and Wales with company number 11141112 whose registered office is at 651 Mauldeth Road West, Chorlton Cum Hardy, Manchester, England, M21 7SA (Employment Business)

AGREED TERMS

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

Definitions

1. Actual Vacancies: the Client's vacant positions as the Client informs the Employment Business from time to time in accordance with this agreement.
2. Assignment: has the meaning given in clause 3 (Client's obligations).
3. AWR 2010: the Agency Workers Regulations 2010 (*SI 2010/93*).
4. Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in are open for business.
5. Commencement Date: has the meaning given in clause 7(Term).
6. Conduct Regulations 2003: the Conduct of Employment Agencies and Employment Business Regulations 2003 (*SI 2003/3319*).
7. Engage: the employment of a Temporary Worker or engagement directly or indirectly through any employment business other than through the Employment Business (whether for a definite or indefinite period) as a direct result of any Introduction or Assignment to the Client and the terms **Engaged** or **Engagement** shall be construed accordingly.
8. Extended Assignment: has the meaning given in clause 4.2.
9. Group: in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.
10. holding company: has the meaning given in clause 1.5.
11. Introduce: the provision to the Client of information by the Employment Business by way of a curriculum vitae or in such format as the Client may from time to time require which identifies the Worker and **Introduction** and **Introduced** shall be construed accordingly.
12. Introduction Date: the date the Employment Business Introduces the Temporary Worker to the Client in accordance with clause 2 (Employment Business's obligations).
13. Introduction Fee: £3,000.00 and has the meaning given in clause 4.1.
14. Nominated Persons: Robert Meehan
15. Other Qualifying Payments: any remuneration payable to the Temporary Worker (other than their basic hourly rate), which is not excluded by virtue of regulation 6 of the AWR 2010, such as any overtime, shift premium, commission or any bonus, incentive or rewards which are directly attributable to the amount or quality of work done by a Temporary Worker and are not linked to a financial participation scheme (as defined by the AWR 2010).
16. Qualifying Period: means the 12-week qualifying period as defined in regulation 7 of the AWR 2010, subject to regulations 8 and 9 of the AWR 2010.
17. Qualifying Temporary Worker: any Temporary Worker who at the relevant time is entitled to the rights conferred by regulation 5 of the AWR 2010 and in particular has been provided to the Client (whether by the Employment Business or any third party) for the Qualifying Period and in respect of whom the Employment Business has complied with its obligations under clause 2 (Employment Business's obligations).
18. Relevant Period: has the meaning given in regulation 10(5) and (6) of the Conduct Regulations 2003.
19. Relevant Terms and Conditions: the relevant terms and conditions for any particular Qualifying Temporary Worker as defined in regulation 6 of the AWR 2010.
20. Screen: carry out pre-vetting checks to the level and criteria as required by the Client from time to time and **Screening** shall be construed accordingly.
21. Subsidiary: has the meaning given in clause 1.5.
22. Temporary Worker: a Worker Introduced and supplied by the Employment Business to the Client to provide services to the Client not as an employee of the Client, who is deemed to be an agency worker for the purposes of regulation 3 of the AWR 2010.
23. Temporary Worker Fees: has the meaning given in clause 6.1 and Schedule One.
24. Territory: the United Kingdom.
25. Unsatisfactory Temporary Worker: has the meaning given in clause 5.2.
26. VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.
27. Vulnerable Person: has the meaning given in regulation 2 of the Conduct Regulations 2003.
28. Worker: an individual worker, or a worker who supplies their services through a company or other legal entity, as the case may be including any of the Employment Business's own employees, workers or agency staff but excluding any individual who supplies their services through an intermediary falling within one of conditions A to C in section 61N of the Income Tax (Earnings and Pensions) Act 2003.
	1. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
	2. The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
	3. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
	4. A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of:
		1. another person (or its nominee) by way of security or in connection with the taking of security; or
		2. its nominee.

For the purposes of determining whether a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be construed so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

* 1. A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
	2. A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
	3. A reference to **writing** or **written** includes fax and email.
	4. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
	5. A reference to **this agreement** or to any other agreement or document is a reference to this agreement or such other agreement or document, in each case as varied from time to time.
	6. References to clauses are to the clauses of this agreement.
	7. Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
1. Employment Business's obligations
	1. These terms set out the agreement between the Employment Business and the Client for the supply of Temporary Workers by the Employment Business to the Client. For the purposes of the Conduct Regulations 2003, the Employment Business acts as an employment business in relation to the Introduction and supply of Temporary Workers pursuant to this agreement.
	2. The Employment Business agrees to search, in the Territory and within such timeframe as the Client may specify, for Workers for the Client as Temporary Workers who meet the Client's stipulated minimum criteria for the Actual Vacancies.
	3. The Employment Business shall take instructions from the **Nominated Persons** or the Client's HR / Recruitment Team only. Where instructions are given by the above categories of person then they shall be binding on the Client. The Employment Business shall not provide any information about Workers, by any means, to any other department or staff of the Client, without the express prior written authorisation of a representative of the Client's HR / Recruitment Team. Without prejudice to any other provision of this agreement, the Employment Business shall accurately and promptly complete and otherwise process and provide information in accordance with such ordering and other monitoring, invoicing or reporting systems (including any IT platforms or programs) which the Client may from time to time designate. If the Employment Business breaches the requirements of this clause, the Client shall not be liable to pay any fees relating to any appointment by the Client arising from the unauthorised contact or referral.
	4. The Employment Business shall Screen Workers before Introducing them to the Client and shall Introduce to the Client only Workers who meet the minimum criteria for the position stipulated by the Client in accordance with clause 3 and who have an interest in the positions for which they are Introduced. The Employment Business shall Introduce only Workers who have the right to work in the Territory and, in particular, the Employment Business shall comply with the Immigration Asylum and Nationality Act 2006, the Immigration Act 2016 and other relevant UK legislation or equivalent legislation in the relevant jurisdiction as well as any regulations or relevant codes of practice regarding the reporting of labour movements, concealed employment and the employment of foreign workers.
	5. Where a Worker is required by law or any professional body to have any qualifications, authorisations or certification to work on the Assignment or the Assignment involves working with any Vulnerable Persons, the Employment Business shall take all reasonably practicable steps to obtain, and offer to provide copies of, any relevant qualifications or authorisations or certification and two references. The Employment Business shall also take all reasonably practicable steps to confirm that the Worker is suitable for the Assignment. If the Employment Business is unable to fully comply with these requirements, it shall inform the Client of the steps it has taken to obtain the necessary information.
	6. Prior to the commencement of the Assignment, the Employment Business shall send the Client written confirmation of:
		1. the identity of the Temporary Worker;
		2. the Temporary Worker's experience, training, qualifications and authorisations necessary for the Assignment;
		3. the Temporary Worker's willingness to carry out the Assignment;
		4. the hourly rate charged by the Employment Business in accordance with clause 6.1;
		5. any notice period to terminate the Assignment; and
		6. the intervals at which invoices shall be rendered to the Client by the Employment Business.
	7. The parties shall meet as needed to review the services provided by the Employment Business. Any resulting changes agreed to the services, remuneration or any other aspect of the agreement shall be of no effect unless confirmed in writing.
	8. Where requested and agreed the Employment Business shall check and maintain a record of COVID-19 Vaccination Status (in line with the relevant legislation) and provide confirmation of COVID-19 ‘passport’ status as needed for a relevant Assignment.
2. Client's obligations

When making a request for the provision of a Temporary Worker to perform certain services (Assignment), the Client will give the Employment Business details of:

* + 1. the date on which the Client requires the Temporary Worker to commence work and the duration, or likely duration, of the work;
		2. the position which the Client seeks to fill, including the type of work the Temporary Worker in that position would be required to do, the location at which, and the hours during which, the Temporary Worker would be required to work, and any risk to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
		3. the experience, training, qualifications and any authorisation which the Client considers are necessary, or which are required by law, or by any professional body, for the Temporary Worker to possess in order to work in the position; and
		4. any expenses payable by or to the Worker; and
		5. any information reasonably required by the Employment Business in order for the Employment Business to fulfil its obligations under the AWR 2010.
1. Temporary to permanent
	1. If, following the supply of a Temporary Worker by the Employment Business to the Client within the Relevant Period, the Client Engages the Temporary Worker, the Client will pay the Employment Business the **Introduction Fee.**  The Introduction Fee shall be the relevant Temporary Worker Fee multiplied by the average number of weekly hours worked by the Temporary Worker (based on each completed week during the Relevant Period) and then multiplied by the number of weeks (or part thereof) which remain unexpired between the end of the Assignment and the end of the Relevant Period.
	2. The Introduction Fee will not be payable if the Client gives written notice to the Employment Business that it intends to continue the hire of the Temporary Worker for a further period of three months (Extended Assignment) before it Engages the Temporary Worker other than through the Employment Business.
	3. Where the Client decides (in accordance with clause 4.2) to have the Temporary Worker supplied by the Employment Business for the Extended Assignment:
		1. the Temporary Worker Fees payable by the Client during the Extended Assignment shall be those applicable immediately before the Employment Business received the Client's notice of election;
		2. at the end of the Extended Assignment, the Client may Engage the Temporary Worker without paying the Introduction Fee; and
		3. if the Client chooses an Extended Assignment, but engages the Temporary Worker before the end of the Extended Assignment, the Introduction Fee may be charged by the Employment Business, reduced proportionately to reflect the amount of the Extended Assignment paid for by the Client.
	4. If the Client introduces the Temporary Worker to another member of the Client’s Group and that company Engages the Temporary Worker during the Relevant Period then the Client shall paid the Employment Business the Introduction Fee.
	5. No Introduction Fee shall be payable where a worker is supplied to the Client to fill a permanent employment vacancy of the Client. In those circumstances the agreement between the Employment Business and the Client regarding permanent placements shall apply. Further, the Temporary Worker Fee shall still be payable where the worker is supplied as a Temporary Worker for an initial period for any reason (such as to allow completion of pre-employment checks or training).
2. Unsatisfactory Temporary Workers
	1. The Employment Business shall notify the Client immediately if it believes that any Temporary Worker is unsuitable for the Assignment or if it becomes aware of any matter that indicates that a Temporary Worker may be unsuitable for the Assignment or is inconsistent with any information previously provided including where a Temporary Worker ceases to have the appropriate skills, approvals or a right to work in the United Kingdom.
	2. If the Client decides that a Temporary Worker is unsuitable to perform the Assignment (an Unsatisfactory Temporary Worker), then the Client shall notify the Employment Business in writing of that fact giving the grounds for its dissatisfaction with the Unsatisfactory Temporary Worker.
	3. If the Client notified the Employment Business of an Unsatisfactory Temporary Worker in accordance with clause 5.2:
		1. within 48 hours of the commencement of the Assignment, then the Assignment will immediately terminate and no Temporary Worker Fees shall be payable; and
		2. more than 48 hours after commencement of the Assignment, then the Assignment shall terminate at the end of the day on which the Client notified the Employment Business of the Unsatisfactory Temporary Worker, and Temporary Worker Fees shall be payable up to [and including] the date of such termination.
	4. The Employment Business or the Client may terminate an Assignment at any time on a minimum of one weeks prior notice. The Client reserves the right to change its requirements at any time before the commencement of the Assignment without any liability of the Client to the Employment Business whatsoever, save for the payment of Temporary Worker Fees due and payable for services already performed. Such cancellation or amendment shall be effective immediately upon the Client giving notice to the Employment Business (which may be given by telephone, email or in writing).
3. Fees and VAT
	1. The Client will pay the Employment Business Temporary Worker Fees in respect of Temporary Workers as agreed at Schedule One (**Temporary Worker Fees**). The Temporary Worker Fees comprise the Temporary Worker's pay and holiday pay, and include the Employment Business's commission and employer's National Insurance contributions. When booking a Temporary Worker for an Assignment, the Employment Business shall advise the Client in writing of the agreed Temporary Worker Fees for that Temporary Worker if they differ from Schedule One. The following conditions apply to the Temporary Worker Fees:
		1. they are calculated according to the number of hours worked by the Temporary Worker (to the nearest quarter hour);
		2. the Client shall during the Assignment sign a time sheet verifying the number of hours worked by the Temporary Worker during a particular week. If the Client is unable to sign a time sheet produced for authentication by the Temporary Worker because the Client disputes the hours claimed, the Client shall inform the Employment Business as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what hours, if any, were worked by the Temporary Worker. Failure to sign the time sheet does not absolve the Client of its obligation to pay the Temporary Worker Fees in respect of the hours actually worked;
		3. the Client acknowledges that it shall not decline to sign a time sheet on the basis that it is dissatisfied with the work performed by the Temporary Worker. In cases of unsuitable or unsatisfactory work the provisions of clause 5.2 shall apply.
		4. the Employment Business shall submit all invoices together with the applicable signed time sheets verifying the number of hours worked by the Temporary Worker;
		5. the Employment Business shall invoice the Client weekly in arrears and invoices are payable within 14 days of receipt. No fee is incurred by the Client until the Temporary Worker has commenced the Assignment;
		6. the Client shall not be required to pay Temporary Worker Fees for any absences (for whatever reason) of a Temporary Worker;
		7. the Employment Business shall not withhold any payment due to a Temporary Worker because of any failure by the Client to pay the Employment Business; and
		8. no increase in the fees payable under this agreement by the Client to the Employment Business may be made without the Client’s prior written consent.
	2. Where applicable, the Employment Business shall charge VAT to the Client, at the prevailing rate, which will become due after the Employment Business has provided the Client with a valid VAT invoice.
	3. In the event that VAT has been treated as exempt from VAT, based on information provided by the clients, and which subsequently, through investigation by HMRC or otherwise is assessed to be standard rated, the Employment Business shall raise VAT only invoices accordingly and reserves the right to pass on any penalty charges issued by HMRC for the error.
	4. If the Client fails to make a payment due to the Employment Business under this agreement by the due date, then the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
4. Term

This agreement shall commence on the date of this Agreement (the Commencement Date) and shall continue, unless terminated earlier in accordance with clause 8 (Default and early termination) until either party gives to the other party 30 Business Days' notice to terminate, expiring on or after the first anniversary of the Commencement Date.

1. Default and early termination

Without affecting any other right or remedy available to it, the Client may terminate this agreement with immediate effect by giving written notice to the Employment Business if:

* + 1. the Employment Business commits a material breach of any term of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 Business Days of receipt of notice in writing to do so;
		2. the Employment Business commits a breach of clause 15.1(c) to clause 15.1(f) (inclusive);
		3. the Employment Business repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
		4. the Employment Business suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
		5. the Employment Business commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Employment Business with one or more other companies or the solvent reconstruction of the Employment Business;
		6. the Employment Business applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
		7. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Employment Business (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Employment Business with one or more other companies or the solvent reconstruction of the Employment Business;
		8. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed over the Employment Business (being a company, partnership or limited liability partnership);
		9. the holder of a qualifying floating charge over the assets of the Employment Business (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
		10. a person becomes entitled to appoint a receiver over all or any of the assets of the Employment Business or a receiver is appointed over all or any of the assets of the Employment Business;
		11. a creditor or encumbrancer of the Employment Business attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Employment Business's assets and such attachment or process is not discharged within 14 days;
		12. any event occurs, or proceeding is taken, with respect to the Employment Business in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in [clause 8(c)](#a379036) to [clause 8(k)](#a717495) (inclusive); or
		13. the Employment Business suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business.
1. Survival
	1. Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
	2. Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
2. Announcements

Neither party shall make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of this agreement, the wider transactions contemplated by it, or the relationship between the parties, without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.

1. Audit and record-keeping
	1. For the duration of this agreement and for a period of six years from the termination or expiry of this agreement, the Employment Business shall maintain full and accurate records of:
		1. the services provided by the Employment Business under this agreement including how it has complied with its obligations under clause 2(Employment Business's obligations);
		2. all expenditure reimbursed by the Client;
		3. all payments made by the Client;
		4. the terms on which it or any subcontractors engage any Temporary Workers; and
		5. the Screening undertaken on any Temporary Workers.
	2. The Employment Business shall promptly on request provide the Client or the Client's representatives with copies of such records referred to in clause 11.1as the Client may from time to time reasonably request and the Employment Business shall provide the Client or the Client's representatives with access, on reasonable notice and within normal working hours, to any of its premises for the purposes of inspecting and/or taking copies of such records.
2. Obligations of the Employment Business
	1. The Employment Business shall be responsible for deduction and payment of all tax, National Insurance contributions and other levies in respect of persons employed by the Employment Business or Temporary Workers and shall Indemnify the Client and any successor to the Employment Business against all liability to make such statutory payments that may be suffered or incurred by the Client and any successor to the Employment Business.
	2. The Employment Business shall ensure that Temporary Workers are contractually obliged to comply with:
		1. all relevant statutes, laws, regulations and codes of practice from time to time in force applicable to the performance of an Assignment and applicable to the Client's business;
		2. the Client's health and safety policy whilst the Temporary Workers are on the Client’s premises or any of the Client's customers' or suppliers' or agents' (direct or indirect) premises; and
		3. a restriction not to disclose any confidential information of the Client or of any of the Client’s customers or suppliers or agents (direct or indirect), which they may acquire during the course of the Assignment.
	3. Before a Temporary Worker starts an Assignment, the Employment Business shall notify the Client if either:
		1. the Temporary Worker is a Qualifying Temporary Worker in relation to the Assignment; or
		2. the Temporary Worker will become a Qualifying Temporary Worker during the course of the Assignment, and

the Employment Business shall advise the Client of the applicable Temporary Worker Fees, including any Other Qualifying Payments which may be payable.

* 1. The Employment Business shall and shall ensure that any subcontractor or other intermediary shall at all times comply with their obligations under the AWR 2010, including providing any Qualifying Temporary Worker with the Relevant Terms and Conditions in accordance with regulation 5 of the AWR 2010.
	2. If either party receives an allegation that there has been a breach of the AWR 2010 in relation to the supply of a Temporary Worker to the Client by the Employment Business (whether that allegation has been made as a request for information under regulation 16 of the AWR 2010 or otherwise), it shall provide a copy of that allegation to the other party within seven days of receipt. The parties shall co-operate with each other in responding to that allegation, which shall include supplying any information which may be reasonably requested by the other party, and complying with any reasonable requests in relation to the contents of any response.
	3. In order to ensure compliance with the AWR 2010, the Employment Business will within seven days of receiving a written request from the Client provide it with details of:
		1. the number of Temporary Workers that it is currently supplying to the Client;
		2. the parts of the Client's undertaking in which those Temporary Workers are working; and
		3. the type of work those Temporary Workers are carrying out,

together with any other information which the Client may reasonably request in relation to any payments made by the Employment Business, its subcontractors or any other intermediaries to any Temporary Workers.

1. Confidentiality
	1. Each party undertakes that it shall not at any time during this agreement, and for a period of two years after termination or expiry of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by [clause 13.2](#a955312).
	2. Each party may disclose the other party's confidential information:
		1. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this [clause 14](#a425800); and
		2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
	3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.
2. Data protection
	1. The following definitions apply in this clause 14:

**Agreed Purposes**: the provision of the supply of temporary labour services.

**Controller**, **data controller**, **processor**, **data processor**, **data subject**, **personal data**, **processing** and **appropriate technical and organisational measures**: as set out in the Data Protection Legislation.

**Data Protection Legislation**: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended] [and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications)]; and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

**Permitted Recipients**: the parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with this agreement.

**Shared Personal Data**: the personal data to be shared between the parties under this agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject identification data, financial data and employment data.

* 1. This clause 14 sets out the framework for the sharing of personal data between the parties as data controllers. Each party acknowledges that one party (the **Data Discloser**) will regularly disclose to the other party (the **Data Recipient**) Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
	2. Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.
	3. Each party shall:
		1. ensure that it has all necessary consents and notices in place to enable lawful transfer of the Shared Personal Data to the Data Recipient for the Agreed Purposes;
		2. give full information to any data subject whose personal data may be processed under this agreement of the nature such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
		3. process the Shared Personal Data only for the Agreed Purposes;
		4. not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
		5. ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by this agreement;
		6. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and
		7. not transfer any personal data received from the Data Discloser outside the UK unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.
	4. Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:
		1. consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
		2. promptly inform the other party about the receipt of any data subject access request;
		3. provide the other party with reasonable assistance in complying with any data subject access request;
		4. not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;
		5. assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
		6. notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
		7. at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data;
		8. use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
		9. maintain complete and accurate records and information to demonstrate its compliance with this clause 14; and
		10. provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.
1. Warranties and undertakings
	1. The Employment Business warrants that:
		1. it has the necessary expertise to provide the services contemplated in this agreement and will perform them in keeping with the highest professional business standards by using appropriately qualified, experienced and trained personnel;
		2. it does and it shall comply with the all relevant statutes, laws, regulations and codes of practice from time to time in force in the relevant Territory;
		3. all Temporary Workers are (and shall remain) employed by the Employment Business or are (and shall remain) treated as employed by the Employment Business under section 44 of the Income Tax (Earnings and Pensions) Act 2003;
		4. all amounts paid (or to be paid) to Temporary Workers are (or will be) paid subject to the deduction of tax and national insurance contributions under PAYE and all such deductions are (or will be) paid together with employer national insurance contributions and other applicable levies, on time to HMRC;
		5. it has complied with (and will continue to comply with) all tax and NICs obligations concerning the Temporary Workers including making timely and accurate returns and the proper maintenance and preservation of records, and the Employment Business has not been given any penalty, notice or warning regarding the same; and
		6. it is not (and nor will it prior to the cessation of this agreement become) a managed service company within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.
	2. Each party warrants that it has full capacity and authority to enter into and perform this agreement.
2. Non-solicitation

The Client shall not, either on its own account or in partnership or association with any person, firm, company or organisation, or otherwise and whether directly or indirectly during, or for a period of six months from, the end of the term of this agreement, solicit or entice away or attempt to entice away or authorise the taking of such action by any other person, any key executive of the Employment Business who has worked on the services provided under this agreement at any time during the term of this agreement other than by means of a national advertising campaign open to all-comers and not specifically targeted at such executives.

1. Assignment and other dealings
	1. Neither party shall assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld).
	2. The Employment Business shall not subcontract or delegate in any manner any or all of its obligations under this agreement to any third party or agent without the prior written consent of the Client. It shall be a condition of such consent that the subcontractor signs and observes an agreement containing terms at least as onerous as those contained in this agreement. Without prejudice to this clause, the Employment Business shall in all cases retain sole responsibility for the performance of the tasks assigned to it under this agreement, regardless of the use of authorised or unauthorised subcontractors and the Employment Business shall be liable for the acts and omissions of any subcontractor (of any tier and authorised and unauthorised) or any intermediaries whatsoever as if they were the acts and omissions of the Employment Business itself.
2. No partnership or agency
	1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
	2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
3. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

1. Entire agreement
	1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
	2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.
2. Force majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement, including payment, if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

1. Severance
	1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
	2. If any provision or part-provision of this agreement is deemed deleted under clause 22.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
2. Third party rights
	1. Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
	2. The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.]
3. Notices
	1. A notice given to a party under or in connection with this agreement shall be in writing and shall be:
		1. delivered by hand or by pre-paid first-class post or other next working day delivery service at the address given in this agreement or as otherwise notified in writing to the other party (for the Employment Business 173 Broadway, Urmston, Manchester M41 7NW and for the Client the address as listed at the commencement of this agreement); or
		2. sent by email to the address commonly used by the parties.
	2. Unless proved otherwise, any such notice shall be deemed to have been received:
		1. if delivered by hand, at the time the notice is left at the address given in this agreement or given to the addressee;
		2. if sent by pre-paid first-class post or other next working day delivery service providing proof of delivery, at 9.00am on the second Business Day after posting; or
		3. if sent by email, at the time of transmission.
	3. If deemed receipt under clause 24.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this clause 24.3, business hours means 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt.
	4. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
4. Governing law

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

1. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This agreement has been entered into on the date stated at the beginning of it.

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| **Signed by a Director for and on behalf of the Client** |  | **....................****Director** |
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|  |
| **Signed by a Director for and on behalf of the Employment Business**  |  | **Cucumber Recruitment Director** |