

oyster

# Temporary Terms of Business



2022 - 2023

[oysterpartnership.com](https://oysterpartnership.com)

**These terms and conditions** apply to any Recruitment Services provided by The Oyster Partnership Limited (company number **05020374**) whose registered office is at 64 North Row, Mayfair, London, W1K 7DA ("**the Company**") to any client ("**the Client**").

**Background:**

- (A) The Company is in the business of resourcing, introducing, and supplying the services of temporary workers and independent service providers to fulfil its clients' service requirements.
- (B) The Company will arrange for the Services to be supplied to the Client by a Contractor in accordance with the terms of this Agreement.
- (C) This Agreement is a framework agreement, the terms of which will apply to any and each Assignment Schedule agreed between the parties.
- (D) The Company acts as an Employment Business except where any permanent placement results from the Company's Introduction(s) to the Client, in which case the Company will act as an Employment Agency.

**It is agreed** as follows:

1. **Definitions and interpretation**

1.1 In this Agreement, unless the context otherwise requires, the following definitions will apply:

**"Agreement"** means the agreement between the Company and the Client comprising the terms set out in this document including each Assignment Schedule;

**"Assignment"** means the assignment for which the Company provides a Contractor to supply the Services;

**"Assignment Start Date"** means the date on which the Assignment starts;

**"Assignment Schedule"** means the schedule confirming the details of each Assignment and which is incorporated into the terms of the Agreement;

**"AWR"** means the Agency Workers Regulations 2010, and **"Agency Worker"** has the meaning given under Regulation 3(1) of the AWR;

**"Business Day"** means any day (other than Saturday or Sunday) on which clearing banks are open for business in London;

**"Client's Group"** means the Client, any body corporate of which the Client is a subsidiary (as defined in section 1159 of the Companies Act 2006), any other subsidiary of such body corporate and any subsidiary of the Client;

**"Company's Group"** means the Company, any body corporate of which the Company is a subsidiary (as defined in section 1159 of the Companies Act 2006), any other subsidiary of such body corporate and any subsidiary of the Company;

**"Conduct Regulations"** means The Conduct of Employment Agencies and Employment Businesses Regulations 2003;

**"Consultant"** means the individual contracted by a PSC Contractor or an Umbrella Contractor to perform the Services as named in the relevant Assignment Schedule, and any Substitute pursuant to clause 5;

**"Contracted-Out"** means the supply of a service where the service provider is responsible (as a matter of contract and reality) for delivering one or more defined deliverables and where payment for the service is calculated on a deliverables or output basis rather than on a time-spent or time and materials basis. The provision of staff or labour on a time-spent basis will not be a Contracted-Out arrangement;

**"Contractor"** means collectively any PSC Contractor, Individual Contractor, or Umbrella Contractor, (including the Consultant where context requires);

**"Transfer Fee"** means 25% of the total annualised Remuneration payable to the Contractor or the Consultant. Where the Client fails to provide the Company with details of the relevant remuneration

then the annualised remuneration shall be determined to be 1800 times the hourly rate (or, if a daily rate has been agreed, 260 times the daily rate) at which the Consultant was supplied to the Client.

**“Data Protection Legislation”** means the EU’s GDPR (2016/679), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426), the Data Protection Act 2018, and all applicable laws and regulations relating to the Processing of Personal Data and privacy as amended, re-enacted, replaced or superseded from time to time, including where applicable the guidance and codes of practice issued by the UK’s Information Commissioner or any other law relating to data protection, the processing of personal data, and privacy resulting, from the United Kingdom leaving the European Union;

**“Employment Business”** means as it is defined in the Conduct Regulations;

**“End User”** means any client or customer of the Client for whom, or at whose premises, the Services are supplied by a Contractor under this Agreement;

**“Engagement”** means the engagement, employment, hire, or use of a Contractor or a Consultant under a contract of services or a contract for services;

**“Extended Hire Period”** means an aggregate period of service provision of 48 weeks (excluding, for the avoidance of doubt, any period during which the Services are not supplied);

**“Force Majeure”** means any cause preventing a party from performing any or all of its obligations arising from or attributable to acts, events, omissions, or accidents beyond the reasonable control of the party so affected;

**“Good Industry Practice”** means the exercise of the skill, diligence, prudence, foresight, and judgment which would be expected from a suitably skilled and experienced person engaged in the same type of services as the Services, applying the best standards currently generally applied in the relevant industry;

**“Hire Period”** means the period during which the Services are supplied during an Assignment (excluding, for the avoidance of doubt, any period during which the Services are not supplied);

**“Introduction”** means whichever is the earlier of the passing by the Company to the Client of information which identifies or relates to, or the interview in person, by telephone or by video link by the Client of, a Contractor or Consultant and **“Introduces”** and **“Introduced”** will be construed accordingly;

**“Location”** means the location at which the Contractor supplies the Services, including the Client’s site or premises;

**“Loss”** means any demand, contribution, claim, action, proceeding, liability, loss, damage, costs, expenses, tax, national insurance contributions (to the extent permitted by law) and charges and any related penalties, fines or interest whatsoever whether founded in statute, contract, tort or otherwise made or brought against or incurred (including without limitation all losses, liabilities and costs incurred as a result of defending or settling any claims); the term **“Losses”** will be construed accordingly;

**“Off-Payroll Legislation”** means the legislation set out in the Amendments to Chapters 8 and 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 as outlined in the Schedule 1 of the Finance (No.2) Bill 2017;

**“Opt Out”** means a notice given by an Umbrella Contractor or a PSC Contractor and the Consultant in accordance with Regulation 32(9) of the Conduct Regulations of their agreement that the Conduct Regulations will not apply in respect of the supply of the Services; and the term **“Opted Out”** will be construed accordingly;

**“Payment Rate”** means the rate of payment for the Services as set out in the Assignment Schedule;

**“PSC Contractor”** means a limited/personal services company which contracts with the Company and through which a Consultant supplies the Services;

**“Public Authority”** means an organisation which is a public authority as defined by the Freedom of Information Act 2000 and as further defined in s61L of the Off-Payroll Legislation;

**“Recruitment Services”** means the business of resourcing, introducing, and supplying the services of temporary workers and independent service providers by the Company;



**"Relevant Period"** means whichever of the following periods ends later: (a) the period of 8 weeks commencing on the day after the day on which the Contractor last supplied the Services to the Client via the Company (whether under this Agreement or otherwise); or (b) the period of 14 weeks commencing on the first day on which the Contractor most recently supplied the Services to the Client (as adjusted in accordance with Regulation 10 of the Conduct Regulations to take into account any break between supplies or 42 days or more);

**"Remuneration"** means the gross salary or fees per annum, including any guaranteed and/or anticipated bonus and commission earnings, pension, allowances, inducement payments, the benefit of a company car (for which a nominal value of £5,000 will be added) and all other payments payable to or receivable by a Contractor for 1 year. If the actual amount of the Remuneration is not known, it will be calculated by multiplying the daily charge by 240;

**"Restricted Period"** means the term of an Assignment and the following 12 months from the last day of the Assignment;

**"Services"** means the services supplied by the Contractor, and where relevant performed by a Consultant, as detailed in the relevant Assignment Schedule;

**"Systems"** means telecommunications systems, IT systems and security systems;

**"Umbrella Contractor"** means an umbrella company which supplies a Consultant to perform the Services as an employee of the umbrella company; and references to **"Umbrella Company"** will be construed accordingly.

**"Work Results"** means any item of work carried out and delivered pursuant to this Agreement as part of or arising out of the Services.

- 1.2 Each term starting with a capital letter and not defined in clause 1.1 or elsewhere in this Agreement is as defined in the Assignment Schedule.
- 1.3 Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of this Agreement) and all subordinate legislation made (before or after the date of this Agreement) under it from time to time.
- 1.4 Where the context permits, words denoting:
  - (a) persons will include bodies corporate and unincorporated associations of persons;
  - (b) the singular includes the plural and vice versa; and
  - (c) one gender will include any gender.
- 1.5 This Agreement will apply (and will be deemed to be accepted by the Client) from the earlier of the date on which the Company first Introduces the Contractor or any Consultant to the Client or the Client first requests the Company to provide the Recruitment Services, and will apply thereafter in relation to each subsequent Introduction and/or issued Assignment specification and to each Assignment Schedule agreed between the parties hereunder. In the event of any conflict or inconsistency between an Assignment Schedule and the terms in this Agreement the terms of the relevant Assignment Schedule will take precedence.
- 1.6 Without prejudice or limitation to clause 6, the Company's Standard Terms of Business for Introducing Candidates for Direct Engagement will apply where the Client decides to Engage a Contractor or a Consultant on a direct basis which is not immediately preceded by the supply of that Contractor or Consultant on a temporary assignment basis.
2. **The Company's obligations**
  - 2.1 The Company will use its reasonable endeavours to procure that the Services will be provided during the relevant Assignment period.
  - 2.2 The Company will use its reasonable endeavours to procure that the Contractor and any Consultant will:
    - (a) supply the Services at the Location(s) in accordance with Good Industry Practice;

- (b) comply with the Client's reasonable requirements as may be notified by the Client to the Company from time to time; and,
- (c) comply with all relevant Client regulations, policies and protocols as notified by the Client to the Company from time to time, including on health and safety and security, to the extent that they are appropriate when a PSC Contractor supplies the Services at the Location(s).

**2.3** The Company will require the Contractor and where relevant the Consultant to confirm that they have valid and subsisting leave to enter, work, and remain in the United Kingdom for the duration of the relevant Assignment.

### **3. The Client's obligations**

**3.1** The Client warrants that if the Company places, or is asked to place, any advertisement in order to source potentially suitable Contractors, it has given the Company prior authority to do so.

**3.2** The Client warrants that it has (or will, prior to the relevant Assignment Start Date) given the Company sufficient information for the Company properly to consider the suitability of the Contractor to supply the Services, including but not limited to:

- (a) the identity of the Client and, if applicable, the nature of the Client's business;
- (b) the date on which the Client requires the supply of the Services to commence and the duration or likely duration of the supply of the Services;
- (c) details of the Services including, but not limited to, the type of work, the Location at which and the hours during which the Services are to be supplied, any risks to health and safety known to the Client and the steps taken by the Client to prevent or control such risks;
- (d) the experience, training, qualifications, and any authorisations which the Client considers are necessary, or which are required by law or by any professional body for the Contractor or Consultant to possess in order to supply the Services;
- (e) any specific risks to health and safety in relation to the Location(s) or specific experience required for a person to work at the Location(s); and
- (f) any expenses payable by or to the Contractor.

**3.3** The Client agrees that the Company has provided it (or will provide prior to the relevant Start date) with confirmation of the following:

- (a) the identity of the Contractor and where appropriate the Consultant;
- (b) that the Contractor and where appropriate the Consultant has the experience, training, qualifications, and any authorisation which the Client considers are necessary, or which are required by law or by any professional body, to supply the Services; and
- (c) that the Contractor and any Consultant are willing to supply the Services.

**3.4** To the extent that the Company may not have provided the Client with the confirmation set out in clause 3.3 above, the Client agrees that it is satisfied with the information supplied; and that if the Contractor or Consultant fails to have the experience, training, qualifications and/or any authorisation which the Client considers are necessary, or which are required by law or by any professional body to supply the Services, the Company will have no liability to the Client in respect of this.

**3.5** The Client will:

- (a) carry out risk assessments of the Services to be undertaken and notify the Company, the Contractor, and any Consultant immediately of any specific or potential hazards relating to the Assignment, together with any precautions he should take in relation to such risks;
- (b) not allow the Contractor or any Consultant to undertake any work that is hazardous without first undertaking a risk assessment and notifying him and the Company of any risks identified;
- (c) if applicable, make clear to the Company, the Contractor, and any Consultant what rules (including but not limited to health and safety, site and security policies, procedures, and regulations) apply in respect of the Location(s);

- (d) check and sign, or electronically verify, timesheets (in a form approved by the Company) ("**the Timesheets**") verifying the number of hours worked by the Contractor and evidencing satisfactory performance of the Services by the Contractor;
  - (e) allow a PSC Contractor to determine generally how the Services should be supplied without exercising any right of supervision, direction, or control over the Consultant;
  - (f) notify the Company immediately if it is dissatisfied with the performance of the Services by the Contractor, in which case the provisions of clause 5 below will apply. For the avoidance of doubt, the Client has no authority to discipline any Contractor or to terminate the supply of the Services directly with any Contractor or Consultant;
  - (g) (without limitation to the above) not commit any act or omission constituting unlawful discrimination or harassment of any Contractor or Consultant in connection with the supply of the Services;
  - (h) provide the Company, on a timely basis, with such information as the Company will reasonably request from the Client to enable the Company to comply with or otherwise to evidence its and/or the Client's compliance with the AWR; and,
  - (i) notify the Company immediately and without delay, and in any event within 24 hours, if a Contractor or Consultant fails to attend for the purposes of supplying the Services under an Assignment, or notifies the Client that the Contractor or Consultant is unable to attend for any reason.
- 3.6** Where the Services are supplied by a PSC Contractor to a Client which is a Public Authority, and in the case of all Services supplied by a PSC Contractor after 5<sup>th</sup> April 2021, clauses 3.8 to 3.16 below will apply.
- 3.7** The Client warrants that it will, prior to the Assignment Start Date, provide written notice to the Company confirming whether, in its reasonable opinion, the deemed employment status in which the Consultant will provide the Services under the Assignment is of a worker or deemed employee ("**the Status Determination Statement**").
- 3.8** The Client warrants that it will take reasonable care when coming to the conclusion stated in the Status Determination Statement; and the Company will be entitled to rely on the Status Determination Statement as evidence to decide whether to pay the PSC Contractor gross, or net of Pay As You Earn tax ("**PAYE**") and Class 1 National Insurance Contributions (primary and secondary) ("**NICs**") if the Client determines the status is that of a deemed employee.
- 3.9** The Company may request the Client to provide reasons for the conclusion stated in the Status Determination Statement. If so requested, the Client warrants that it will within 45 days of the date of such request provide to the Company written confirmation of its reasons for reaching its assessment, and if so required replace the Status Determination Statement.
- 3.10** If the Client fails to provide a Status Determination Statement in accordance with clause 3.8 above or the Off-Payroll Legislation, the Company reserves the right to reach its own conclusion about the Consultant's deemed employment status.
- 3.11** The Client warrants that it will co-operate with the Company's reasonable requests for information if Her Majesty's Revenue & Customs ("**HMRC**") and/or the PSC Contractor challenges the Status Determination Statement and/or the Company's decision to pay the PSC Contractor net or gross of PAYE and NICs.
- 3.12** The Client warrants that it will notify the Company without delay if it has reason to believe that the circumstances under which the PSC Contractor supplies or will supply the Services under the Assignment have or will change such that the outcome of the Status Determination Statement would be different to that previously notified to the Company.
- 3.13** If the Client is not a Public Authority but it supplies services to a Public Authority on a contracted-out basis ("**Contracted Out Services**") the Client warrants that:
- (a) neither it nor any member of the Client's Group is a Public Authority.
  - (b) the services it supplies are supplied on a fully Contracted-Out basis;

- (c) it will not at any time during the Assignment on-supply or otherwise assign the services of a Contractor or Consultant engaged under this Agreement to any member of the Client's Group or any third party in connection with any service to a Public Authority which are not Contracted-Out Services.
- 3.14 The Client will indemnify (and keep it fully indemnified on demand) and hold harmless the Company against any direct or indirect, special, additional, or consequential Losses suffered by the Company attributable to:
  - (a) the Company relying in good faith on a Status Determination Statement which was incorrect, incomplete, out of date, or misleading; and which the Client should reasonably have known was incorrect, incomplete, out of date or misleading.
  - (b) any act, omission, default, delay, negligence, or breach of statutory duty by or on the part of the Client which is suffered by the Company arising out of the Client's failure to comply with its obligations under of the Off-Payroll Legislation;
  - (c) any breach of the warranties contained in clauses 3.8 to 3.14 above.
- 3.15 Nothing in clauses 3.7-3.15 above will limit the Company's general obligation at law to mitigate a Loss it may suffer or incur as a result of an event that may give rise to a claim under an indemnity.
- 3.16 The Client will assist the Company in complying with the Company's duties under the Working Time Regulations by supplying any relevant information about an Assignment requested by the Company and the Client will not do anything to cause the Company to be in breach of its obligations under such Regulations. Where the Client requires the Services to be performed by a Supplier and/or Consultant for more than 48 hours in any week the Client will notify the Company of this requirement before the commencement of that week.
- 4. **Fees and Timesheets**
- 4.1 The Company will raise invoices to the Client for its fees in respect of the Recruitment Services and the Services supplied ("**the Fees**") during the invoicing period at the Payment Rate in the Assignment Schedule.
- 4.2 Unless otherwise agreed in writing, the invoicing period in which the Company will invoice the Client for the Fees will be on a weekly basis, and the invoices will be payable by the Client within 30 days of the date of invoice.
- 4.3 For the avoidance of doubt, in the calculation of the Fees in relation to Services, a Timesheet signed by a representative of the Client will be conclusive evidence that the Services have been supplied to the satisfaction of the Client at the times and for the total period of time set out in the Timesheet. If the Client disputes the hours claimed, it will inform the Company within 2 days of receipt of the disputed Timesheet and in any event, no later than 5 days from the date of invoice to which that Timesheet relates. The Client will co-operate with the Company to establish the hours during which the Contractor supplied the Services. Failure by the Client to sign any such Timesheet does not absolve the Client from its obligation to pay the Company the Fees in accordance with this clause 4.
- 4.4 The Company will not be liable for fraudulent Timesheets submitted by or on behalf of a Contractor.
- 4.5 Unless otherwise agreed in writing by a director of the Company, the Company will not be obliged to make any rebates or refunds of Fees or other sums payable to the Company by the Client.
- 4.6 All amounts due under this Agreement will be paid in full without any deduction or withholding other than as required by law. The Client will not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part.
- 4.7 Unless otherwise agreed by the Company, all payments due to it under this Agreement will be paid by direct bank transfer to the Company's bank account.
- 4.8 The Company will apply and charge the Client interest and compensation on any overdue amount in accordance with the Late Payment of Commercial Debt (Interest) Act 1998.
- 4.9 All amounts payable under this Agreement (including, for the avoidance of doubt, any Transfer Fee) are exclusive of value added tax and any other like taxes applicable to a Location(s), which will be payable

by the Client at the rate prevailing at the time and accounted to the relevant taxation authority by the Company.

- 4.10** The Client acknowledges that the Payment Rates are based on the total cost of the Contractor supplying the Services plus the Company's fee for its Recruitment Services. The Company reserves the right to increase the Payment Rates to take into account any statutory or other legal change, including, without limitation, the application of the AWR, the Off-Payroll Legislation, and the Pensions Act 2008 which leads to an increase in a Contractor's or a Consultant's statutory and/or legal entitlements resulting in an increase in the cost of providing the Recruitment Services for the Company. The Company will give the Client 20 Business Days written notice of any such increase to Payment Rates.

## **5. Substitution**

- 5.1** The Company will be entitled from time to time, without prejudice to the other terms of this Agreement, to offer the Client a suitably qualified, skilled, and experienced substitute Contractor.
- 5.2** If a PSC Contractor supplies the Services it will be entitled from time to time, without prejudice to the other terms of this Agreement, to provide the Client a suitably qualified, skilled, and experienced substitute Consultant.
- 5.3** If within 24 hours of the Assignment Start Date a Contractor fails in the reasonable opinion of the Client to supply the Services satisfactorily, the Client will notify the Company in writing to that effect and the Company will use its reasonable endeavours to procure that a suitable substitute Contractor is available to perform the Services as soon as possible. If no such substitute is available within 2 Business Days after receipt of the Client's written notification of unsatisfactory performance by the Company, the Client may terminate the relevant Assignment Schedule by written notice in accordance with clause 7.2 (a) below.

## **6. Transfer Provisions**

- 6.1** If the Client seeks to Engage a Contractor or Consultant, either directly or pursuant to being supplied by another Employment Business, it shall notify the Company immediately of this intention.
- 6.2** If the Client Engages a PSC Contractor or Consultant supplied by the Company who has not Opted-Out, either directly or pursuant to being supplied by another Employment Business, within either the duration of the Assignment or the Relevant Period, the Client shall, subject to electing by giving 14 days' written notice to the Company, be liable to pay either:
- (a) The Fees for the Extended Hire Period of the Contractor or Consultant, at the Payment Rate agreed pursuant to the Agreement, for the additional time during which the Contractor or Consultant is supplied; or
  - (b) A Transfer Fee.
- 6.3** If the Client does not give the notice specified in clause 6.1 above before a Contractor or Consultant is Engaged, the Parties agree that the Transfer Fee will be payable by the Client.
- 6.4** If the Client Engages a Contractor or Consultant supplied by the Company who has Opted-Out, either directly or pursuant to being supplied by another Employment Business, within either the duration of the Assignment or the Restricted Period, the Client will be liable to pay a Transfer Fee.
- 6.5** If there is an Introduction of a Contractor or Consultant to the Client which does not result in the supply of that Contractor or Consultant by the Company to the Client, but which leads to the Engagement of the Contractor or Consultant by the Client either directly or pursuant to being supplied by another Employment Business, within 12 months from the date of Introduction, the Client shall be liable to pay the Company the Transfer Fee.
- 6.6** If there is an Introduction of a Contractor or Consultant to the Client, regardless of whether it results in the supply of that Contractor or Consultant by the Company to the Client and regardless of whether the Contractor or Consultant have Opted-Out, and the Contractor or Consultant is Introduced by the Client to a third party (including the Client's Group) which leads to the Engagement of the Contractor or Consultant by the third party, either during an Assignment or within 12 months from the date of Introduction, the Client will be liable to pay the Company the Transfer Fee. In this situation, if the Client



is an RPO or similar outsource provider, the Introduction Fee will apply if the Contractor or Consultant is Introduced to the Client's client or the End User.

- 6.7 No refund of any Transfer Fee will be paid if that an Engagement subsequently terminates.
- 6.8 The Client will not employ or seek to employ any member of the Company's staff. If any member of the Company's staff nevertheless accepts an Engagement with the Client within three months of leaving the Company's employment, the Client shall be liable to pay a Transfer Fee, calculated in relation to the applicable Remuneration on the date the staff member left the Company.
- 6.9 The Client agrees that the Transfer Fee is calculated to recognise the commercial losses and additional management costs incurred by the Company in these situations, that it represents liquidated damages, and that it is not a penalty.
- 7. **Termination**
- 7.1 The Agreement will continue unless or until terminated in accordance with this clause 7.
- 7.2 The Company may terminate the Agreement and any Assignment by written notice to the Client with immediate effect if:
  - (a) there is any breach of this Agreement by the Client, which is, in the reasonable opinion of the Company, incapable of being remedied or if the Client is entitled to terminate this Agreement pursuant to clause 5; or,
  - (b) the Company forms the opinion for any reason that (i) the Client may not meet its obligations to the Company, or (ii) the Contractor may no longer be willing, able, or suitable to supply the Services to the Client.
  - (c) the Company has reasonable grounds to believe that the Client is or is about to suffer an Insolvency Event (as defined below); or
  - (d) the Client refuses to accept the increase of the Payment Rate so that the Payment Rate (less the Company's fee for its Recruitment Services fee) is higher than the Comparable Pay (as defined in the AWR) pursuant to clause 12.4 below and/or is sufficient to cover increased costs of mandatory pension contributions, as applicable; or
  - (e) the Client refuses to give the Company any relevant Information (and/or gives the Company incorrect Information) required for the Company and/or the Client to comply with their AWR duties pursuant to clauses 12.1 and/or 12.1 below.
- 7.3 Either party may terminate the Agreement and any Assignment by written notice with immediate effect if:
  - (a) that party will become unable to commence, continue or completely perform its obligations under this Agreement by reason of illness, injury, other incapacity or by reason of Force Majeure affecting that party, which is not within that party's reasonable control; or
  - (a) either party will become insolvent within the meaning of the Insolvency Act 1986, becomes bankrupt, apply for, or have made against it or him a receiving order, or makes any composition with its creditors or an administration order or if an order is made or resolution passed for the winding up of either party or either party passes a resolution to cease trading or actually ceases trading ("**an Insolvency Event**").
- 7.4 The Company may terminate the Agreement and any Assignment by 5 Business Days' written notice to the Client if there is any other serious or repeated breach of this Agreement by the Client, which is, in the reasonable opinion of the Company, capable of remedy and which is not remedied within 10 Business Days after an earlier notice requiring it to do so.
- 7.5 Either party may terminate the Agreement and any Assignment by 5 Business Days' written notice or as otherwise specified in the relevant Assignment Schedule.
- 7.6 If, for any reason, the Client does not require the Contractor to supply the Services during any period of notice given in accordance with this clause 7, the Client will remain liable to pay the Fees to the Company as though the Contractor was continuing to supply the Services in accordance with the Assignment Schedule for the duration of the notice period.

7.7 Termination of this Agreement is without prejudice to the rights of either party arising prior to termination.

## 8. **Liability & Indemnity**

8.1 Where the Services are performed by a PSC Contractor, the Company and the Client agree that the PSC Contractor offers its services and those of the Consultant on an independent business to business basis. Accordingly, neither the Client nor the Company supervises, directs or controls; nor has the right to supervise, direct or control the actions of the PSC Contractor or Consultant in the way that it would if an employment or worker relationship existed.

8.2 If the Client requires the ability, or intends, to supervise, direct or control any PSC Contractor or Consultant, the Client will immediately notify the Company.

8.3 The parties acknowledge that the Company is not obliged to introduce any Contractor to the Client, and that it will not be liable for any failure to do so.

8.4 The Client agrees that the Company is in the business of providing Recruitment Services and that whilst every effort is made by the Company to ensure a reasonable standard of skill, integrity, and reliability from any Contractor or Consultant, the Company cannot accept liability for the quality of the Services provided by the Contractor or Consultant, or their activities while at the Location(s).

8.5 The Client agrees that the Company will not be responsible for any Contractor or any Consultant during an Assignment; and that accordingly, the Client will assess and insure against risks in respect of, during, or arising out of the Assignment.

8.6 The Company does not accept any liability for a Contractor's or Consultant's acts or omissions.

8.7 Subject to clause 8.8 below, the Company will not be liable for any indirect, special, consequential, or additional Losses or delay arising from:

- (a) any failure to provide the services of a Contractor or Consultant for all or part of the term of this Agreement;
- (b) the negligent, wrongful, dishonest, or fraudulent acts or omissions or misrepresentations of the Contractor or the Consultant, including, without limitation, any lack of skill of the Contractor/Consultant; or
- (c) theft of any data or materials or the negligent driving of a Contractor and/or Consultant.

8.8 Nothing in this Agreement will operate to exclude or limit the Company's liability for:

- (a) death or personal injury caused by the Company's negligence;
- (b) its own fraudulent acts or omissions; or
- (c) any other liability which cannot by law be excluded.

8.9 The Client will indemnify and keep indemnified the Company against any Losses incurred by the Company arising out of this Agreement and/or as a result of any breach of this Agreement by the Client.

## 9. **Confidentiality and Intellectual Property**

9.1 The Company undertakes to the Client that it will, and will require that the Contractor will:

- (a) keep confidential, all information relating to Work Results, Intellectual Property Rights in the Work Results and the Client's business and affairs (including, for the avoidance of doubt, Payment Rates) ("**Confidential Information**") which may become known to it/them in connection with the supply of the Services; and
- (b) require that the Supplier and the Consultant will enter into any and all assignments of Intellectual Property Rights (relating to Work Results) or confidentiality undertakings that the Client may reasonably require it or them to enter into.

## 10. **Data Protection**

- 10.1** For the purpose of this clause 10 the terms “**Data Controller**”, “**Data Processor**”, “**Data Subject**”, “**Personal Data**”, “**Process**” and “**Processing**” will have the meanings prescribed under the Data Protection Legislation.
- 10.2** The parties acknowledge that for the purposes of the Data Protection Legislation, they are both Data Controllers in common with each other, and will be Data Processors in their own right. Clauses 10.3 to 10.4 below set out the relevant particulars of the Processing as required by the Data Protection Legislation.
- 10.3** The subject matter, nature and purpose of Data Processing is to Process Contractor and Consultant Personal Data as is necessary to supply the Services pursuant to the Agreement.
- 10.4** The category of Data Subjects is Contractors and Consultants and any other individuals Introduced pursuant to the Agreement. The type of Personal Data will include a Contractor’s and Consultant’s first and last name, contact information (email, phone, and address), ID data, professional life data, and personal life data (including residency and immigration status).
- 10.5** The Client will, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) Process that Personal Data only on the written instructions of the Company unless required to do otherwise by applicable law. In that event, the Client will inform the Company of such legal requirement before Processing the Personal Data other than in accordance with the Company’s documented instructions, unless that same law prohibits the Client from doing so on important grounds of public interest;
  - (b) ensure that any natural person acting under the authority of the Client who has access to the Personal Data does not Process it except on the instructions of the Company, unless required to do otherwise under applicable law;
  - (c) ensure that it has in place industry leading security for the Personal Data, including protection against unauthorised or unlawful Processing and against accidental loss, destruction or damage; and implement industry leading technical and organisational measures, subject to review and approval by the Company, to ensure a level of security appropriate to the risk of harm that might result from, unauthorised or unlawful Processing, accidental or unlawful loss, destruction or alteration, unauthorised (or disclosure of) access or damage to Personal Data taking into account: the nature, scope, context and purposes of the Processing of the Personal Data to be protected; the state of the art in technological developments in information security; and the cost of implementing any measures;
  - (d) include, as a minimum, pseudonymising and encrypting the Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services; ensuring that availability of and access to the Personal Data can be restored in a timely manner after an incident; and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it;
  - (e) ensure that all personnel who have access to and/or Process any Personal Data are obliged to keep the Personal Data confidential;
  - (f) immediately inform the Company if it considers that any of the Company’s instructions infringe the Data Protection Legislation;
  - (g) not transfer any Personal Data outside of the European Economic Area or any other territory in which the European Commission has decided that the third country ensures an adequate level of protection; in which case, the Client will comply with any safeguards put in place by the Company to protect the Personal Data;
  - (h) notify the Company without undue delay on becoming aware of a Personal Data breach, which will include without limitation if any Personal Data is lost, stolen, destroyed, damaged or corrupted; or where there is an unauthorised or accidental disclosure of such Personal Data;

- (i) notify the Company immediately if it receives any complaint, notice or communication that relates to the Processing of the Personal Data (including without limitation any Data Subject requests) and/or to either Party's compliance with the Data Protection Legislation;
  - (j) at the written direction of the Company, and automatically on the termination of the Agreement or the earlier termination of any Assignment, delete or return Personal Data and copies thereof to the Company unless required by applicable law to store the Personal Data; provided always that if the Client Engages a Contractor or Consultant, then such Personal Data may be retained for each such Data Subject until such Engagement has been completed;
  - (k) maintain complete and accurate records and information to demonstrate its compliance with this clause 10 and make available such records and any other information necessary to demonstrate compliance with its obligations as a Data Processor under the Data Protection Legislation, and allow for and contribute to audits by the Company or the Company's designated auditor or data supervisory authority on reasonable notice; and,
  - (l) assist and co-operate with the Company as necessary and reasonable, 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. The Client will be solely responsible for its own costs in complying with this provision.
- 10.6** The Company does not consent to the Client appointing any third-party processor of Personal Data under the Agreement without the Company's prior written approval.
- 10.7** The Company warrants that the Contractor and any Consultant has provided his formal consent under the Data Protection Legislation to the storage, processing, and transmission of his Personal Data by the Company only for purposes relating to any actual or potential Assignment, whether within or outside the EU.
- 10.8** The Company will use its best endeavours to ensure that the Contractor and any Consultant will comply with the Data Protection Legislation.
- 10.9** The Client will indemnify the Company against all direct, indirect, additional, special, or consequential Loss which the Company, any Contractor or any Consultant may incur or suffer by reason of any breach of this clause 10 or the Data Protection Legislation by the Client, save where the Client is acting at the direct instruction of the Company. This indemnity will only apply to the extent that such Losses are not materially contributed to by the Company.
- 11. Anti-Bribery**
- 11.1** The Client agrees that the Company will not tolerate bribery in any form in connection with the Recruitment Services.
- 11.2** The Client will:
- (a) comply with all applicable laws, statutes, regulations, codes, and guidance relating to anti-bribery and anti-corruption ("**Anti-Bribery Laws**"), including without limitation the Bribery Act 2010;
  - (b) not engage in any activity, practice, or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice, or conduct had been carried out in the United Kingdom;
  - (c) not do, or omit to do, any act that will cause the Company to be in breach of the Anti-Bribery Laws; and
  - (d) promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Client in connection with the performance of this Agreement.
- 11.3** The Client will promptly notify the Company if, at any time during the term of this Agreement, its circumstances, knowledge, or awareness changes such that it would not be able to repeat the warranties set out in clause 11.2 above.
- 11.4** Breach of this clause 11 will be deemed a material breach of this Agreement.
- 11.5** The Client will indemnify the Company against any direct, indirect, additional, special, or consequential Losses incurred by the Company as a result of any breach of this clause 11 by the Client.



## 12. **AWR**

- 12.1** The parties agree that neither a PSC Contractor nor its Consultant will have any rights as an Agency Worker because they:
- (a) do not work under the supervision, direction, or control of the Client (or the Company);
  - (b) do not have a contract of employment, or any other contract with the Company to perform the Services personally; and
  - (c) carry on a profession and/or their own business as an independent undertaking.
- 12.2** The Company and the Client will each comply, and cooperate fully, with the other in connection with their obligations under the AWR.
- 12.3** The Client will provide the Company on demand with such information as the Company may reasonably request from the Client to enable the Company to comply with or otherwise evidence the Company's and/or the Client's compliance with the AWR.
- 12.4** The Company reserves the right to refuse to supply a Contractor who is an Agency Worker if the Company reasonably considers that the Payment Rate may (after deduction of the Company's Recruitment Services fee, PAYE and NICs) will be less than the relevant Comparable Pay.
- 12.5** The Client will immediately notify the Company if it receives any complaint, request for information or claim from a Contractor relating to the Payment Rate (after deduction of the Company's Recruitment Services fee) or any other rights claimed under the AWR. The parties will work and co-operate together to respond to and resolve any such complaints or claims. The Client undertakes to provide the Company with any further Information it may request in order to respond to any such complaint, request for information or claim.
- 12.6** The Client will indemnify the Company for any Losses arising directly or indirectly from any breach of this clause 12 by the Client.

## 13. **General**

This Agreement together with each Assignment Schedule will constitute the entire agreement between the parties and supersede all previous agreements and arrangements (if any) whether written, oral, or implied between the Company and the Client relating to the Recruitment Services. All such agreements still effective at the date of this Agreement (if any) will be deemed to have been terminated by mutual consent with effect from the Assignment Start Date but without prejudice to any rights which have arisen prior to such termination and so that nothing in this clause 13.1 will operate to exclude or limit the liability of any party in respect of fraud.

- 13.1** The Client acknowledges that, in entering into this Agreement, it has not relied on any representations by the Company, the Supplier or the Consultant made before the execution of this Agreement other than those expressly set out in this Agreement.
- 13.2** This Agreement is personal to the Client and the Client will not be entitled to assign or sub-contract its obligations or rights under this Agreement to any third party without the prior written consent of the Company. The Company will however be entitled to assign this Agreement to any member of the Company's Group and, upon such assignment, without prejudice to the assignor's rights in respect of matters arising prior to such assignment; all references to the Company will be deemed to refer to the assignee.
- 13.3** No amendment to this Agreement is effective unless it is in writing and signed on behalf of each party by a person duly authorised by that party.
- 13.4** Any notice required to be given under this Agreement (including the delivery of any timesheet or invoice) will be in writing signed by a person duly authorised by the sending party and delivered by hand, sent by e-mail, or prepaid first class post to the recipient at its address specified in this Agreement (or as otherwise notified from time to time to the sender by the recipient for the purposes of this Agreement).
- 13.5** This Agreement will be governed by and construed in all respects in accordance with English law and the Courts of England and Wales will have exclusive jurisdiction.

- 13.6** If any provision or any part of this Agreement is held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law:
- (a) such provision or part will to that extent be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement will not be affected; and
  - (b) to the extent permitted by law, the Company and the Client will negotiate in good faith a substitute to any provision severed under clause 13.7(a) by a provision which is of similar effect, but which is not illegal or unenforceable.
- 13.7** None of the provisions of this Agreement is intended to be for the benefit of, or enforceable by third parties (other than permitted assignees of the Company who will 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.

**Signed by Sasza Bandiera on behalf of  
Oyster Partnership**

  
.....  
**Managing Director**

**Date:**

**Signed by  
on behalf of**

.....

**Date:**