Contract 8A

Terms of Engagement with an Intermediary who has not opted out of the Conduct Regulations (within IR35) – Public sector only

**March 2021**

# When to use this contract

This contract is for use when supplying temporary workers who:

1. provide their services to a public authority;
2. work through an intermediary such as a personal services company or a partnership and who meet the conditions of liability set out in sections 51 to 53 and 61N 61O and 61P ITEPA (see Note 8);
3. work “inside” IR35 and,
4. have not opted out of the Conduct Regulations. Detailed guidance on opting out of the Conduct Regulations is available [here](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Transparency-in-Supply-Chains-Reporting-Requirement-Nov-2015.pdf).

The Agency Workers Regulations will apply in relation to this contract.

We have other contracts where the client is not a public authority and/ or where the assignment is an outside IR35 assignment and/ or it is an opted out contract. Please see the [REC Model Document Library](https://www.rec.uk.com/legal-resources/model-document-library/model-terms-and-conditions).

Use this contract with the following documents:

|  |  |
| --- | --- |
| **Contracts:** | Contract 7A – Terms of Business with a Public Authority for the supply of a limited company contractor who has not opted out of the Conduct Regulations (within IR35 and under SDC) |
| **Additional documents:** | Document B – Assignment Details Form  Document G – Information Request Form  Checklist 7A or 7B – Intermediary checklist |

The REC has produced these template documents for use by corporate members. These are generic documents for use across a range of sectors so members will need to amend the contracts to suit their own business needs. The REC legal team cannot amend documents for members, or review amendments they have made. However, Croner, the REC’s partner can assist members at discounted rates – please see here: <https://www.rec.uk.com/business-support/croner-tools>.

## Changes made in April 2018

The General Data Protection Regulation (GDPR) comes into effect across the EU on 25 May 2018. It updates the existing data protection legislation to reflect technological change and to better protect individuals.  The GDPR applies to all organisations which collect personal data i.e. data which can identify living individuals. Those organisations may be either data controllers or data processors.  Recruiters collect personal data as well as sensitive personal data (now “special categories of data under GDPR”) and so will for the most part be data controllers though they may on occasion act as data processors.  Organisations must know what capacity they work in because this will determine their obligations.  The Government wish the GDPR rules to apply in the UK post-Brexit and so have incorporated the rules into a new Data Protection Act 2018.  The new act also deals with any exemptions or separate arrangements the UK can make under the GDPR.

The GDPR imposes new obligations on data controllers and data processors whilst giving individuals new rights.  The REC model documents have always had the appropriate data protection provisions but we have reviewed our model documents to ensure they continue to protect our members following the changes.  Fortunately the changes required have been minimal and are listed at the back of the document.  We have also corrected any typos or formatting issues but do not list these.   We recommend that you adopt the updated terms in their entirety to make sure that you capture all changes. Please note that the REC Legal team cannot amend documents for members.

This contract has been drafted for use when you operate as a data controller.  If you operate as a data processor\* you will need a separate contract with the relevant data controller.  REC will not draft a data processor agreement because the circumstance sin which our members may act as data processors are limited but specific to their agreements with the data controllers on whose behalf they will process the data.  \* Data processors process personal data on behalf of a data controller.

Both the Information Commissioner’s Office and the EU Article 29 Working Party have produced a lot of detailed guidance which the person in the organisation responsible for data protection should be familiar with. The REC has also prepared a range of materials including its [REC Guide to the GDPR](https://www.rec.uk.com/legal-resources/legal-guide/gdpr/GDPR-Jan-2018.pdf). Please also see our full range of [model documents](https://www.rec.uk.com/legal-resources/model-document-library/model-terms-and-conditions/gdpr-model-documents) and all our materials on the [GDPR section of the REC legal guide](https://www.rec.uk.com/legal-resources/legal-guide/gdpr).

## Why we updated this contract in 2017: changes to the IR35 rules in the public sector

The IR35 rules (aka “Intermediaries legislation”) are set out in sections 48 – 61 of the Income Tax (Earnings and Pensions) Act 2003. In brief, the rules apply where an individual supplies their services through an intermediary, such as a personal services company (PSC). If that intermediary did not exist, and the individual would have been regarded as an employee of the end user client for tax purposes, then s/he should be subject to employee levels of PAYE and NICs, whilst employers’ NICs are also due. In these circumstances the assignment is said to be “inside IR35”. If the individual would not have been an employee of the end user client (for tax purposes), then the assignment is “outside IR35”.

The rules came into effect on 6 April 2017 which affect the application of the IR35 rules in the public sector. In brief:

1. The rules apply where the client is a public authority (see Note 15). Public authorities include all government departments, local authorities, NHS, schools, police, public bodies such as BBC and publically owned companies such as Transport for London. HMRC say that [outsourced services are excluded](https://www.gov.uk/guidance/off-payroll-working-in-the-public-sector-scope-of-the-reform-and-preparing-for-6-april-2017) from the changes meaning that the PSC remains liable for the IR35 assessment and any required deductions. However this is not expressly stated in the legislation.
2. The rule changes apply to all payments made on or after 6 April 2017.
3. The public authority (rather than the PSC itself) should assess IR35 status and must advise the employment business that pays the PSC of its decision. The public authority must do this
4. where they enter into a contract on or after 6 April 2017: on or before entering the contract or before services are first provided if that is later, or
5. where they entered into contract before 6 April 2017, before the first payment is made after 6 April.
6. HMRC have developed an online [Employment Status Checker](https://www.gov.uk/guidance/check-employment-status-for-tax) to support these changes. However it is not mandatory to use the employment status checker so some public authorities may use another service, including commercial review services. The checker may also be completed anonymously. It is possible though to add identifiers in order to identify which assignment a particular test result applies to.
7. Office holder roles are automatically inside IR35. There is no statutory definition of office holder but [HMRC’s Employment Status Manual](https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm2502) states that an office is a “*permanent, substantive position which had an existence independent from the person who filled it, which went on and was filled in succession by successive holders*”. This includes for example, the Director of Child Services at a local authority or chief executive or chief finance officer roles. The public authority should know and advise whether a role is an office holder role – employment businesses should not make that decision.
8. Where the assignment falls “inside IR35” the engager (i.e. the party that pays the intermediary) will have to payroll the individual supplied by the intermediary, calculate their “deemed direct payment” and deduct tax and NICs. The engager will then pay the individual (or their PSC) and report the payment via Real Time Information. The PSC will no longer be able to claim the 5% allowance.
9. **Employers’ NICs:** the employment business will have to pay employers’ national insurance. It is a commercial negotiation between the employment business and the client whether it increases its charge rate to the client or must find that sum within prescribed rates. Importantly the employment business cannot deduct employers’ NICs from the agency workers’ pay but it can renegotiate and reduce rates payable to the intermediary to take account of the fact that the employment business (and not the PSC) must now account for employers’ NICs.

## Further changes to the off-payroll rules

Under the 2021 Finance Bill government has introduced a few changes to the Off-pay roll rules which will take effect from 6 April 2021. These changes include:

* a new provision to address the unintended widening of the definition of an intermediary, where it is a company. This means that umbrella companies, and other third-party companies will not be in scope of the rules provided that the payment the worker receives will be taxed as employment income.
* the rules still apply to contractors, who must have a material interest in the intermediary they work through. Material interest means owning more than 5% of the company shares; or being entitled to 60% or more of the profits in a partnership. But there will be a non-material interest provision for companies. The rules will apply if the contractor has 5 % or less of the company shares or they receive, expect, or entitled to receive payment that is not deemed employment income.
* a targeted, anti-avoidance rule will be applied to arrangements where the primary purpose is to gain a tax advantage by circumventing the rules.
* to make sharing information easier, instead of just the worker, the intermediaries will be obliged to confirm to persons in the supply chain whether the IR35 qualifying conditions are met.
* extend the consequences for providing fraudulent information, so where fraudulent information is provided, the liability will be moved to the party in the UK supply chain that provided the fraudulent information.

Clauses 4.1.4, 5.1.14, 9.2.12 and Note 8 have been amended to reflect these changes.

For more information on the off-payroll rules see our and [IR35 hub](https://www.rec.uk.com/recruiters/legal/ir35) the [HMRC’s Employment Status Manual](https://www.gov.uk/hmrc-internal-manuals/employment-status-manual) in particular chapters 9000, 10000,10003,10003A, 10003B, 10022,10023 and 11000

## How to use this contract:

**Notes:** All notes are at the back of the contract. We suggest you print the notes separately so that you can read them side by side with the contract (rather than flick back and forth through the text). Delete all “[*see Note X*]” from the text before passing the contract to the Public Authority.

**Automatic numbering:** All contracts have automatic numbering. You do not need to amend the numbering in any of the clauses.

Button image**Highlighting:** In order to assist you in using this template for your own business’ needs we have highlighted the places where you will need to insert information specific to your business and also where there are optional clauses or notes of explanation at the end of the template contract. The notes and insertions are highlighted in grey while the optional clauses are highlighted in blue, yellow and pink. To remove highlighting from your Word document do the following: select the highlighted text, or press CTRL+A to select all of the text in the document; then on the Formatting toolbar, click the arrow next to Highlight tab and then select None and the highlighting will be removed.

**Options in clauses:** Some clauses require you to choose from Option A, Option B or Option C. We have highlighted those options in colour. When you have chosen which option to go for, simply delete the other options (remember also to remove the letter “A”, “B” or “C” from the chosen option).

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###### **THE PARTIES**

1. [*Insert Intermediary’s* *name*] Limited (registered company no. [*insert registered company no.*]) [trading as [*insert trading name if different*]] of [*address – see Note 1 (re registered office or trading address)*] (**“the** **Intermediary”**). [*see Note 2 if the Intermediary is a limited liability partnership*]
2. [*Insert your business* *name*] Limited (registered company no. [*insert registered company no*.]) [trading as [*insert trading name if different*]] of [*address – see Note 1 (re registered office or trading address*]) (**“the Employment Business”**). [*see Note 3 if the Employment Business is a limited liability partnership*]

**RECITALS**

* 1. The Intermediary carries on the business of the provision of contractor services and has agreed to provide the services (**“the** **Intermediary Services”**) specified in the relevant Assignment Details Form.
  2. The Employment Business has requested the Intermediary and the Intermediary has agreed with the Employment Business, to supply the Intermediary Services to the Hirer on the terms and subject to the conditions of this Agreement.

# **DEFINITIONS AND INTERPRETATION**

# In this Agreement the following definitions apply:

|  |  |
| --- | --- |
| **“Agency Worker”** | means such of the Intermediary’s employees, workers, officers or representatives supplied to provide the Intermediary Services; |
| **“Assignment”** | means the Intermediary Services to be performed by the Agency Worker for a period of time during which the Intermediary is supplied by the Employment Business to provide the Intermediary Services to the Hirer; |
| **“Assignment Details Form”** | means written confirmation of the Assignment details set out in clause 6.2; |
| **“AWR”** | means the Agency Workers Regulations 2010 [and/ or the Agency Workers (Northern Ireland) Regulations 2011; [*see Note 4*] |
| **“AWR Regulation 10 Contract of Employment”** | means a permanent contract of employment between the Intermediary and the Agency Worker that satisfies the requirements of Regulation 10 of the AWR; |
| **“Companies Acts”** | means the Companies Acts 1985, 1989 and 2006; |
| **“Conduct Regulations”** | means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 [and/or the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005; [*see Note 5*] |
| **“Confidential Information”** | shall mean any and all confidential commercial, financial, marketing, technical or other information or data of whatever nature relating to the Hirer or Employment Business or their business or affairs (including but not limited to this Agreement, data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information concerning the Assignment) in any form or medium whether disclosed or granted access to, whether in writing, orally or by any other means, provided to the Intermediary or any third party in relation to the Assignment by the Hirer or the Employment Business or by a third party on behalf of the Hirer whether before or after the date of this Agreement together with any reproductions of such information in any form or medium or any part(s) of such information; |
| **“Control”** | means (a) the legal or beneficial ownership, directly or indirectly, of more than 50% of the issued share capital or similar right of ownership; or (b) the power to direct or cause the direction of the affairs and/or general management of the company, partnership, statutory body or other entity in question, whether through the ownership of voting capital, by contract or otherwise, and "Controls" and "Controlled" shall be construed accordingly; |
| **“Data Protection Laws”** | means the Data Protection Act 2018, the General Data Protection Regulation (EU 2016/679) and any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data; [*see Note 6*] |
| **“Deductions”** | means any deductions which the Employment Business may be required by law to make from the Deemed Direct Payment and in particular in respect of PAYE tax and Class 1 National Insurance Contributions; |
| **“Deemed Direct Payment”** | means the sum calculated by Employment Business in accordance with Section 61Q ITEPA; [*see Note 7*] |
| **“Engagement”** | means the engagement (including the Intermediary’s and/or the Agency Worker’s acceptance of the Hirer’s offer), employment or use of the Intermediary and/or any Agency Worker by the Hirer or by any third party to whom the Intermediary and/or any Agency Worker have been introduced by the Hirer, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, an agency, license, franchise or partnership arrangement, or any other engagement, and “Engage”, “Engages” and “Engaged” shall be construed accordingly; |
| **“First Assignment”** | means:   1. the relevant Assignment; or 2. if, prior to the relevant Assignment:    * 1. the Agency Worker has worked in any assignment in the same role with the relevant Hirer as the role in which the Agency Worker works in the relevant Assignment; and      2. the relevant Qualifying Period commenced in any such assignment,   that assignment (an assignment being (for the purpose of this defined term) a period of time during which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Hirer to work temporarily for and under the supervision and direction of the relevant Hirer); |
| **“FOIA”** | means the Freedom of Information Act 2000 [or the Freedom of Information (Scotland) Act 2002]; |
| **“Hirer”** | means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Intermediary is supplied or Introduced requiring the Intermediary Services; |
| **“Hirer’s Group”** | means (a) any individual, company, partnership, statutory body or other entity which from time to time Controls the Hirer, including (but not limited to) as a holding company as defined in section 1159 of the Companies Act 2006; and (b) any company, partnership, statutory body or other entity which from time to time is Controlled by or is under common Control with the Hirer, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006; |
| **“Inside IR35”** | means an Assignment which meets the requirements of Section 61M ITEPA; [*see Notes 8 and 9*] |
| **“Intermediary Fees”** | means the fees payable to the Intermediary for the provision of the Intermediary Services, as set out in the relevant Assignment Details Form; |
| **“Intermediaries Legislation”** | means sections 48 – 61 ITEPA; [*see Note 10*] |
| **“IR35 Status Decision”** | means the Hirer’s decision on the application of the Intermediaries Legislation to the Assignment in accordance with Section 61T ITEPA, to be provided in writing to the Employment Business; [*see Notes 8 and 9*] |
| **“Losses”** | means all losses, liabilities, damages, costs, expenses, fines, penalties or interest whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands and “Loss” shall be construed accordingly; |
| **“Minimum Rate”** | means £[x per hour/per day] being the minimum rate of pay that the Employment Business reasonably expects to achieve, for all hours worked by the Intermediary; [*see Note 11*] |
| **“MSC Legislation”** | means Chapter 9 of Part 2 of ITEPA; |
| **“Net Pay”** | means the Deemed Direct Payment minus the Deductions; [*see Note 12*] |
| **“NICs Legislation”** | means legislation regarding the deduction and payment of national insurance contributions including in particular the Social Security (Categorisation of Earners) Regulations 1978 [the Social Security (Categorisation of Earners) (Northern Ireland) Regulations 1978] and the Social Security Contributions (Intermediaries) Regulations 2000; [*see Note 13*] |
| **“Outside IR35”** | means an Assignment which does not meet the requirements of Section 61M ITEPA; [*see Note 14*] |
| **“Public Authority”** | means (a) as defined in the FOIA and (b) as further defined in Section 61L ITEPA; [*see Note 15*] |
| **“Period of Extended Hire”** | means any additional period that the Hirer wishes the Intermediary to be supplied for beyond the duration of the original assignment or series of assignments as an alternative to paying a Transfer Fee; |
| **“Qualifying Period”** | means 12 continuous Calendar Weeks during the whole or part of which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Hirer to work temporarily for and under the supervision and direction of the relevantHirer in the same role, and as further defined in the Schedule to this Agreement; |
| **“Relevant Period”** | means whichever ends the later of (a) the period of 8 weeks commencing on the day after the last day on which the Intermediary worked for the Hirer having been supplied by the Employment Business; or (b) the period of 14 weeks commencing on the first day on which the Intermediary worked for the Hirer having been supplied by Employment Business; or 14 weeks from the first day of the most recent Assignment where there has been a break of more than 6 weeks (42 days) since any previous assignment; [*see Note 16*] |
| **“Relevant Terms and Conditions”** | means terms and conditions relating to:   1. pay; 2. the duration of working time; 3. night work; 4. rest periods; 5. rest breaks; and 6. annual leave   that are ordinarily included in the contracts of employees or workers (as appropriate) of the Hirer whether by collective agreement or otherwise and including (for the avoidance of doubt and without limitation) such terms and any basic working and employment conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation; |
| **“Reporting Requirements”** | means the requirements of the Income Tax (Pay as You Earn) (Amendment No. 2) Regulations 2015; [*see Note 17*] |
| **“Specified Intermediary”** | means the party required to submit the report to HMRC in compliance with the Reporting Requirements; [*see Note 17*] |
| **“Tax and NICs Information”** | means the Agency Worker’s national insurance number and written confirmation from HMRC of his/ her current tax code; |
| **“Temporary Work Agency”** | means as defined in the Schedule to this Agreement; |
| **“Transfer Fee”** | means a fee payable by the Hirer to the Employment Business if the Hirer or any third party wishes to Engage the Intermediary, as permitted by Regulation 10 of the Conduct Regulations; |
| **“Transparency Regulations”** | means the Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015; [*see Note 18*] |
| **“Type of Work”** | means [insert the type of work you expect to supply the Intermediary into] [*see Note 19*]; and |
| **“WTR”** | means the Working Time Regulations 1998 [and/or the Working Time Regulations (Northern Ireland) 1998; [*see Note 20*] |

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

# **THE AGREEMENT**

* 1. This Agreement together with the attached Schedule and any applicable Assignment Details Form constitutes the entire agreement (“**the Agreement**”) between the Employment Business and the Intermediary for the supply of the Intermediary Services to the Hirer and shall govern all Assignments undertaken by the Intermediary. However no contract shall exist between the Employment Business and the Intermediary between Assignments. This Agreement shall prevail over any terms put forward by the Intermediary. [*see Note 21*]

# During an Assignment the Intermediary will be engaged on a contract for services by the Employment Business on the terms set out in this Agreement [*see Note 22*]. For the avoidance of doubt this Agreement shall not be construed as a contract of employment between any Agency Worker or any representative of the Intermediary supplied to carry out the Assignment and either the Employment Business or the Hirer, and any of the liabilities of an employer arising out of the Assignment shall be the liabilities of the Intermediary. [*see Note 23*]

# No variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between the Employment Business and the Intermediary and set out in writing and a copy of the varied terms is given to the Intermediary no later than 5 business days following the day on which the variation was made stating the date on or after which such varied terms shall apply.

# The Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973 [or in the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981]) (as amended) when introducing or supplying the Intermediary for Assignments with its Hirer. [*see Note 24*]

# **RELATIONSHIP BETWEEN THE EMPLOYMENT BUSINESS AND THE INTERMEDIARY AND BETWEEN THE HIRER AND THE INTERMEDIARY**

# The Employment Business will endeavour to obtain suitable Assignments for the Intermediary performing the agreed Type of Work. The Intermediary shall not be obliged to accept an Assignment offered by the Employment Business.

* 1. The Intermediary acknowledges that the nature of temporary work means that there may be periods when no suitable work is available and agrees that:
     1. suitability of the work to be offered shall be determined solely by the Employment Business;
     2. the Employment Business shall incur no liability to the Intermediary (or an Agency Worker) should it fail to offer opportunities to work to the Intermediary.
  2. The Intermediary acknowledges to the Employment Business that the Hirer is a Public Authority. The Intermediary also acknowledges that the Hirer’s IR35 Status Decision is that the Assignment is an Inside IR35 Assignment. Accordingly, the Intermediary acknowledges that the Employment Business must calculate the Deemed Direct Payment from the Intermediary Fees, make the appropriate Deductions from the Deemed Direct Payment and account for the same to HMRC.
  3. Subject to clause 3.2 the Intermediary acknowledges to the Employment Business that its services are supplied to the Employment Business as an independent contractor and that accordingly the responsibility of complying with all other statutory and legal requirements relating to the Agency Worker shall fall upon and be discharged wholly and exclusively by the Intermediary.
  4. Notwithstanding the Employment Business’s obligation to make the Deductions (as set out in clause 3.3), nothing in this Agreement shall render any Agency Worker an employee or worker of either the Employment Business or the Hirer. The Intermediary shall ensure that the Agency Worker does not hold him/herself out as an employee or worker of either the Employment Business or the Hirer. In the event that any person should seek to establish any liability or obligation upon the Employment Business on the grounds that the Agency Worker is an employee or worker of the Employment Business or the Hirer, the Intermediary shall upon demand indemnify the Employment Business and keep it indemnified in respect of any such liability or obligation and any related Losses which the Employment Business or Hirer shall incur.

* 1. If before or during an Assignment or during the Relevant Period the Hirer wishes to Engage the Intermediary or any Agency Worker directly or through another employment business, the Intermediary acknowledges that the Employment Business will be entitled either to charge the Hirer a Transfer Fee or to agree to a Period of Extended Hire with the Hirer at the end of which the Intermediary or the Agency Worker (as appropriate) may be Engaged directly by the Hirer or through another employment business without further charge to the Hirer. In addition the Employment Business will be entitled to charge a Transfer Fee to the Hirer if the Hirer introduces the Intermediary or any Agency Worker to a third party (other than another employment business) who subsequently Engages the Intermediary or any Agency Worker before or during an Assignment or within the Relevant Period. [*see Note 25*]
  2. If the Agency Worker has completed the Qualifying Period on the start date of the relevant Assignment or following completion of the Qualifying Period during the relevant Assignment, and if the Agency Worker is entitled to any terms and conditions relating to the duration of working time, night work, rest periods, rest breaks and/or annual leave under the AWR which are different and preferential to rights and entitlements relating to the same under the WTR, any such terms and conditions will be as set out in the relevant Assignment Details Form or any variation to the relevant Assignment Details Form (as appropriate) and the Intermediary will give the Agency Worker any such entitlements. [*see Note 26*]
  3. As a Temporary Work Agency, the Intermediary will notify the Employment Business as soon as possible prior to the commencement of the first Assignment under this Agreement if the Agency Worker has an AWR Regulation 10 Contract of Employment and shall provide a copy of that contract [on request from the Employment Business]. The Intermediary will also notify the Employment Business immediately if and when any such contract is terminated. [*see Note 27*]
  4. As a Temporary Work Agency, the Intermediary will comply with the AWR in all relevant respects.
  5. Save to the extent any Losses result from any act or omission of the Employment Business or the Hirer, the Intermediary shall indemnify and keep indemnified the Employment Business (or, as the case may be, the Hirer) against any Losses the Employment Business (or the Hirer) may suffer or incur as a result of any claim made by or on behalf of the Agency Worker under the AWR.

1. **WARRANTIES PROVIDED BY THE INTERMEDIARY** 
   1. The Intermediary warrants to the Employment Business that:
      1. by entering into and performing its obligations under this Agreement it will not be in breach of any obligation which it owes to any third party;
      2. the Agency Worker has the necessary skills and qualifications to provide the Intermediary Services;
      3. the Intermediary and the Agency Worker providing the Intermediary Services have not opted out of the Conduct Regulations and that the Intermediary will only supply Agency Workers to perform the Intermediary Services who have not opted out of the Conduct Regulations;
      4. the Agency Worker meets one of the conditions of liability as set out in Sections 51 to 53 and 61N,61O and 61P ITEPA and will continue to meet such conditions of liability for the duration of the Assignment; [*see Note 8*]
      5. the Intermediary is incorporated in the UK [and that all directors are resident in the UK for tax purposes];
      6. the Intermediary will pay the Agency Worker only into a nominated UK bank account [in the individual’s name];
      7. all information the Intermediary provides to the Employment Business in order to comply with the Reporting Requirements and clauses 5.1.11 to 5.1.17 inclusive is complete and accurate; and
      8. the Intermediary and the Agency Worker will comply with the Data Protection Laws. [*see Note 29*]
2. **THE INTERMEDIARY’S OBLIGATIONS** 
   1. The Intermediary agrees on its own part and on behalf of the Agency Worker if it accepts any Assignment offered by the Employment Business:
      1. to co-operate with the Hirer’s reasonable instructions and accept the direction of any responsible person in the Hirer’s organisation within the scope of the Assignment;
      2. to observe any relevant rules and regulations of the Hirer’s establishment or the premises where the Intermediary Services are being performed to which attention has been drawn or which the Intermediary might reasonably be expected to ascertain; including but not limited to those relating to health and safety to the extent that they are reasonably applicable to the Intermediary and the Agency Worker;
      3. to take all reasonable steps to safeguard its own safety, the safety of the Agency Worker and the safety of any other person who may be affected by the actions of the Agency Worker whilst on the Assignment;
      4. to comply with the Data Protection Laws in respect of any personal data which the Intermediary is granted access to for the purpose of or by reason of the performance of the Intermediary Services;
      5. not at any time to divulge to any person, nor use for its own or any other person’s benefit, any Confidential Information relating to the Hirer’s or the Employment Business’s employees, business affairs, transactions or finances;
      6. not to engage in any conduct detrimental to the interests of the Employment Business and/or the Hirer which includes any conduct which could bring the Employment Business and/or the Hirer into disrepute and/or which results in the loss of custom or business by either the Employment Business or the Hirer;
      7. not to commit any act or omission constituting unlawful discrimination against or harassment of any member of the Employment Business’s or the Hirer’s staff;
      8. not to sub-contract or assign to any third party any of the Intermediary Services which it is required to perform under any Assignment;
      9. to provide the Hirer and/or the Employment Business with any progress reports as may be requested from time to time;
      10. to notify the Employment Business forthwith in writing if it should become insolvent, or if any of the arrangements set out in clauses 9.2.5 to 9.2.7 apply;
      11. to provide the Agency Worker’s Tax and NICs Information to the Employment Business prior to the commencement of the Assignment. **The Agency Worker acknowledges that a delay in providing his/her tax and NICs Information may delay the Employment Business paying the Net Pay to the Intermediary**; [*see Note 30*]
      12. to comply with all relevant legal obligations, including but not limited to VAT legislation and the Companies Acts;
      13. to provide the Employment Business with all such information it may require to comply with (a) the Reporting Requirements where it is the Specified Intermediary or (b) any contractual obligations the Employment Business has to provide information to the Specified Intermediary (where it is a party other than the Employment Business) to enable the Specified Intermediary to comply with its Reporting Requirements; [*see Note 17*]
      14. not to provide any fraudulent documentation or enter into any arrangements or schemes designed to circumventing ITEPA and to notify the Employment Business in writing immediately if it becomes subject to a HMRC investigation or compliance activity including but not limited to any of ITEPA, the NICs legislation or VAT legislation;
      15. to provide the Employment Business with a copy of the terms under which the Intermediary has engaged the Agency Worker; [*see Note 31*]
      16. to provide the Employment Business on request, with any information required to comply with Transparency Regulations 2015; and [*See Note 18*]
      17. to update the Employment Business promptly where any of the information required under clauses 5.1.11 to 5.1.16 inclusive changes.
   2. As soon as possible prior to the commencement of each Assignment and during each Assignment (as appropriate) and at any time at the Employment Business’s request, the Intermediary undertakes to: [*see Note 32*]
      1. inform the Employment Business of any Calendar Weeks in the 24 months immediately preceding the start of the relevant Assignment [*see Note 33*] and/or during the relevant Assignment in which the Agency Worker has worked in the same or a similar role with the relevant Hirer via any third party and which the Intermediary and/or the Agency Worker believes count or may count toward the Qualifying Period; and
      2. provide the Employment Business with all the details of such work, including (without limitation) details of where, when and the period(s) during which such work was undertaken and any other details requested by the Employment Business; and
      3. inform the Employment Business if, in the 24 months immediately preceding the start of the relevant Assignment [*see Note 33*], the Agency Worker has:
         1. completed two or more assignments with the Hirer;
         2. completed at least one assignment with the Hirer and one or more earlier assignments with any member of the Hirer’s Group; and/or
         3. worked in more than two roles during an assignment with the Hirer and on at least two occasions worked in a role that was not the same role as the previous role.
   3. If the Agency Worker is unable for any reason to provide the Intermediary Services during the course of an Assignment, the Intermediary should inform the Employment Business as soon as possible, but in any event no later than 1 hour after the commencement of the Assignment or shift. In the event that it is not possible to inform the Employment Business within these timescales, the Intermediary should alternatively inform the Hirer and then the Employment Business as soon as possible.
   4. If, either before or during the course of an Assignment, the Intermediary becomes aware of any reason why it or the Agency Worker supplied to perform the Intermediary Services may not be suitable for an Assignment, the Intermediary shall notify the Employment Business without delay.
   5. The Intermediary acknowledges that any breach of its obligations set out in clause 4 (Warranties provided by the Intermediary) and this clause 5 (The Intermediary’s Obligations) may cause the Employment Business to suffer Losses and that the Employment Business reserves the right to recover such Losses from the Intermediary by way of set off or deduction from any sums owed by the Employment Business to the Intermediary. [*see Note 34*]
3. **THE EMPLOYMENT BUSINESS’S OBLIGATIONS**
   1. Throughout the term of this Agreement the Employment Business will pay the Intermediary at least the Minimum Rate in respect of the provision of the Intermediary Services. The actual Intermediary Fees will be notified to the Intermediary on a per Assignment basis.

# At the same time as an Assignment is offered to the Intermediary the Employment Business shall provide the Intermediary with an Assignment Details Form setting out the following:[*see Note 35*]

# the identity of the Hirer, and if applicable the nature of their business;

# the date the Assignment is to commence and the duration or likely duration of the Assignment;

# the Type of Work, location and hours during which the Intermediary would be required to provide the Intermediary Services;

# the Intermediary Fees and any expenses payable by or to the Intermediary;

# any risks to health and safety known to the Hirer in relation to the Assignment and the steps the Hirer has taken to prevent or control such risks; and

# what experience, training, qualifications and any authorisation required by law or a professional body the Hirer considers necessary or which are required by law to work in the Assignment.

# Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any public or bank holiday) following save where:

# the Intermediary is being offered an Assignment in the same position as one in which the Intermediary had previously been supplied within the previous 5 business days and such information has already been given to the Intermediary; or

# subject to clause 6.4, the Assignment is intended to last for 5 consecutive business days or less and such information has previously been given to the Intermediary and remains unchanged, the Employment Business needs only to provide written confirmation of the identity of the Hirer and the likely duration of the Assignment.

# Where the provisions of clause 6.3.2 are met but the Assignment extends beyond the intended 5 consecutive business day period, the Employment Business shall provide such information set out in clause 6.2 to the Intermediary in paper or electronic form within 8 days of the start of the Assignment.

1. **TIMESHEETS AND INVOICING**
   1. At the end of each week of an Assignment (or at the end of the Assignment where an Assignment is for a period of less than 1 week or is completed before the end of a week) the Intermediary shall deliver to the Employment Business the Employment Business’s timesheet duly completed to indicate the number of hours worked by the Intermediary during the preceding week signed by an authorised representative of the Hirer. The timesheet must be accompanied by an invoice from the Intermediaryfor the amount due from the Employment Business to the Intermediaryfor the hours worked in that week. Such invoice should bear the Intermediary’s name, the name of the Agency Worker who provided the Intermediary Services, the Intermediary’s company registration number and VAT number, and should state any VAT due on the invoiced sum.
   2. Subject to the Intermediary complying with the provisions of this clause 7 the Employment Business shall pay the for all hours worked regardless of whether the Employment Business has received payment from the Hirer for those hours. [*see Note 36*]
   3. In order to ensure prompt payment, the Employment Business should receive the signed timesheet no later than [specify time] on [specify day] following the week to which it relates. Where the Intermediary fails to submit a properly authenticated timesheet the Employment Business shall, in a timely fashion, conduct further investigations into the hours claimed by the Agency Worker and the reasons, if any, that the Hirer has refused to sign a timesheet in respect of those hours. This may delay any payment due to the Intermediary. [*see Note 37*]

# **PAYING THE INTERMEDIARY**

# Subject to the receipt of the Intermediary’s invoice and signed timesheet in accordance with clause 7 above, and the Intermediary’s compliance with this Agreement, the Employment Business will pay the Intermediary the Net Pay within [7] days of receipt of the Intermediary’s invoice. The Intermediary shall be notified on a per Assignment basis. [*see Note 38 and 39*]

# Subject to clause 8.9, if and when the Agency Worker completes the Qualifying Period the Employment Business reserves the right to vary the Intermediary Fees if there is any variation in the Relevant Terms and Conditions. Any such variation will be as set out in a variation to the relevant Assignment Details Form and the Intermediary shall ensure that, if at any time the Employment Business varies the Intermediary Fees in accordance with this clause 8.2, the Intermediary will, at the same time, make the same variations to the corresponding payments the Intermediary makes to the Agency Worker. [*see Note 40*]

# Under the AWR, on completion of the Qualifying Period the Agency Worker may be entitled to paid annual leave (save where the Intermediary is a Temporary Work Agency and it is agreed in the relevant Assignment Details Form that the Agency Worker is employed on an AWR Regulation 10 Contract of Employment) and/or unpaid annual leave in addition to the Agency Worker’s entitlement to paid annual leave under the WTR provided by the Intermediary. If this is the case, any such entitlement(s), the date from which any such entitlement(s) will commence and how any payment for such entitlement accrues in respect of the relevant Assignment will be as set out in the relevant Assignment Details Form or any variation to the relevant Assignment Details Form and the Intermediary will pass this information on to the Agency Worker and, if the Intermediary receives any such payment(s) for leave from the Employment Business, the Intermediary will make the same payment(s) to the Agency Worker. [*see Note 41*].

# Subject to clause 8.9, on completion of the Qualifying Period the Agency Worker may be entitled to receive a bonus. The Intermediary will, and will procure that the Agency Worker will, comply with any requirements of the Employment Business and/or the Hirer relating to the assessment of the Agency Worker’s performance for the purpose of determining whether or not the Agency Worker is entitled to a bonus and the amount of any such bonus. If, subject to satisfying the relevant criteria, the Agency Worker is entitled to receive a bonus, the Employment Business will pay the bonus to the Intermediary subject to the appropriate Deductions and the Intermediary will pay the bonus to the Agency Worker. [*see Note 42*]

# All payments due from the Employment Business will be made to the Intermediary and not to any third party or the Agency Worker.

* 1. The Employment Business shall not be obliged to pay the Intermediary for any periods during which the Intermediary Services are not provided, whether this is due to the Intermediary being unable to provide the Intermediary Services or where the Hirer does not require the Intermediary Services or otherwise in respect of annual leave (save as where may be the case in accordance with clause 8.3), illness or absence of the Agency Worker.
  2. The Employment Business will pay the Net Pay into a UK business bank account only.
  3. The Intermediary shall bear the cost of any training which the Agency Worker may require in order to perform the Intermediary Services.
  4. Clauses 8.2 to 8.4, inclusive, will not apply where the Agency Worker is employed on an AWR Regulation 10 Contract of Employment.

# **TERM AND TERMINATION**

# Either of the Employment Business or the Intermediary may terminate the Assignment in writing at any time without prior notice or liability. [*see Note 43*]

# Notwithstanding clauses 9.1 and 9.3 of this Agreement, where required by the Hirer, the Employment Business may without notice and without liability instruct the Intermediary to cease work on an Assignment at any time, where:

# the Intermediary has acted in breach of the rules and regulations applicable to third parties providing services to the Hirer or to the Hirer’s own staff; or

# the Intermediary has committed any serious or persistent breach of any of its obligations under this Agreement; or

# the Hirer reasonably believes that the Intermediary has not observed any condition of confidentiality from time to time; or

# the Hirer is dissatisfied with the Intermediary’s or the Agency Worker’s provision of the Intermediary Services and has terminated the Assignment; or

# either the Hirer or the Intermediary is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; or

# an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Hirer or the Intermediary; or

# an order is made for the winding up of the Hirer or the Intermediary, or where the Hirer or the Intermediary passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation or amalgamation where the resulting entity will assume all the obligations of the other party under this Agreement); or

# the Intermediary or the Agency Worker is suspected of any fraud, dishonesty or serious misconduct; or

# the Intermediary or the Agency Worker is unable to perform the Intermediary Services for [2 days] or more; or [*see Note 44*]

* + 1. the Intermediary fails to provide the Agency Worker’s Tax and NICs Information [prior to receipt of the Intermediary’s first invoice for the relevant Assignment]; or [*see Note 45*]
    2. the Hirer provides or seeks to provide, a document which incorrectly states that Assignment is an Inside IR35 assignment; or [*see Notes 8 and 9*]
    3. the circumstances of the Assignment change such that the Assignment ceases to be an Inside IR35 Assignment and becomes an Outside IR35 Assignment or the Agency Worker no longer meets the conditions of liability. [*See Note 46*]
    4. the Intermediary fails to comply with clause 13.3; or
    5. the Employment Business knows or suspects that either the Intermediary or the Agency Worker have breached the Data Protection Laws. [*see Note 47*]

# The Intermediary acknowledges that the continuation of an Assignment is subject to and conditioned by the continuation of the contract entered into between the Employment Business and the Hirer. In the event that the contract between the Employment Business and the Hirer is terminated for any reason the Assignment shall cease with immediate effect without liability to the Intermediary.

# Failure by the Intermediary to give notice of termination as required in the Assignment Details Form shall constitute a breach of contract and shall entitle the Employment Business to claim damages from the Intermediary for any resulting Losses suffered by the Employment Business.

# **INTELLECTUAL PROPERTY RIGHTS**

The Intermediary acknowledges that all copyright, trademarks, patents and other intellectual property rights deriving from the Intermediary Services carried out by the Intermediary and the Agency Worker for the Hirer during the Assignment shall belong to the Hirer. Accordingly the Intermediary shall (and shall procure that the Agency Worker shall) execute all such documents and do all such acts as the Employment Business shall from time to time require in order to give effect to its rights pursuant to this clause.

# **CONFIDENTIALITY**

# In order to protect the confidentiality and trade secrets of any Hirer and the Employment Business and without prejudice to every other duty to keep secret all information given to it or gained in confidence the Intermediary agrees on its own part and on behalf of the Agency Worker as follows:

# not at any time whether during or after an Assignment (unless expressly so authorised by the Hirer or the Employment Business as a necessary part of the performance of its duties) to disclose to any person or to make use of any of the trade secrets or the Confidential Information of the Hirer or the Employment Business with the exception of information already in the public domain;

# to deliver up to the Hirer or the Employment Business (as directed) at the end of each Assignment all documents and other materials belonging to the Hirer (and all copies) which are in its possession including documents and other materials created by it or the Agency Worker during the course of the Assignment; and

# not at any time to make any copy, abstract, summary or précis of the whole or any part of any document or other material belonging to the Hirer except when required to do so in the course of its duties under an Assignment in which event any such item shall belong to the Hirer or the Employment Business as appropriate.

1. **COMPUTER EQUIPMENT WARRANTY**

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

# **CONTRACT MONITORING AND AUDITS**

* 1. The Employment Business reserves the right to audit the Intermediary on [a quarterly/an annual/an ad hoc] basis to ensure compliance with this Agreement and all statutory requirements in relation to all Agency Workers supplied to provide the Intermediary Services. [The Employment Business will give the Intermediary [x] days’ notice of such audit.] [*see Note 48*]
  2. To assist the Employment Business in its audit the Intermediary will:
     1. maintain such records as are necessary to comply with this Agreement and all statutory requirements in relation to all Agency Workers supplied to provide the Intermediary Services, and will provide copies of the same to the Employment Business on request;
     2. provide the Employment Business with access to its premises and original records relating to all Agency Workers supplied to provide the Intermediary Services. [*see Note 49*]
  3. If having conducted an audit, the Employment Business requires the Intermediary to take any action the Intermediary shall take such action within the time period specified [in writing] by the Employment Business. If the Intermediary fails to take such action or to rectify the matter to the Employment Business’s satisfaction, the Employment Business may terminate this Agreement in accordance with clause 9.

# **LIABILITY**

* 1. The Intermediary shall:
     1. be liable for any Losses or injury to any party resulting from the deliberate and/or negligent acts or omissions of the Intermediary or Agency Worker during an Assignment; and
     2. obtain adequate employer’s liability insurance, public liability insurance, professional indemnity insurance and any other suitable policies of insurance in respect of the Intermediary or the Agency Worker. The Intermediary shall maintain such insurances for the duration of the Assignment and following termination of the Assignment for the period specified. The Intermediary shall make a copy of the policy available to the Employment Business upon request. [*See Note 50*]
  2. For the avoidance of doubt, the Employment Business will not be liable to any of the Intermediary or the Intermediary Staff for any Losses they may incur as a result of the Hirer’s IR35 Status Decision.

1. **INDEMNITY**

The Intermediary shall indemnify and keep indemnified the Employment Business against any Losses suffered or incurred by the Employment Business by reason of any proceedings, claims or demands by the Agency Worker, the Hirer or any third party arising out of any non-compliance with, and/or as a result of, any breach of this Agreement or the Data Protection Laws by either the Intermediary or the Agency Worker.

# **severability**

If any of the provisions of this Agreement shall be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the remaining terms, which shall continue to be valid to the fullest extent permitted by applicable laws.

1. **NOTICES**

All notices which are required to be given in accordance with this Agreement shall be in writing and may be delivered personally or by first class prepaid post to the registered office of the party upon whom the notice is to be served or any other address that the party has notified the other party in writing, by email or facsimile transmission. Any such notice shall be deemed to have been served: if by hand when delivered, if by first class post 48 hours following posting and if by email or facsimile transmission, when that email or facsimile is sent.

1. **RIGHTS OF THIRD PARTIES**
   1. Save as set out in clause 18.2, none of the provisions of this Agreement is intended to be for the benefit of or enforceable by third parties and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.
   2. The Hirer shall be entitled to rely on and enforce the indemnities in clause 15 given by the Intermediary in favour of the Hirer, notwithstanding that the Hirer is not a party to this Agreement.
2. **GOVERNING LAW AND JURISDICTION**

This Agreement is governed by the law of [England & Wales/Scotland/Northern Ireland] and is subject to the exclusive jurisdiction of the Courts of [England & Wales/Scotland/Northern Ireland]. [*see Note 52*]

***Signed for and on behalf of the Employment Business***

[print name here]

***Signed for and on behalf of*** [***insert name of limited company or limited liability partnership***] ***Ltd. (the Intermediary)*** [*see Note 53*]

[print name here] [*see Note 54*]

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

Date

**SCHEDULE: “QUALIFYING PERIOD” AND “TEMPORARY WORK AGENCY”**

[*see Note 55*]For the purpose of the definition of “Qualifying Period” in clause 1.1 of this Agreement, when calculating whether any weeks completed with the Hirer count as continuous towards the Qualifying Period, where:

1. the Agency Worker has started working during an assignment and there is a break, either between assignments or during an assignment, when the Agency Worker is not working;
2. the break is:
   1. for any reason and not more than six Calendar Weeks;
   2. wholly due to the fact that the Agency Worker is incapable of working in consequence of sickness or injury and the break is 28 Calendar Weeks or less; paragraph (iii) does not apply; and, if required to do so by the Employment Business, the Agency Worker has provided such written medical evidence as may reasonably be required;
   3. related to pregnancy, childbirth or maternity and is at a time in a protected period, being a period beginning at the start of the pregnancy and ending at the end of the 26 weeks beginning with childbirth (being the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy) or, if earlier, when the Agency Worker returns to work;
   4. wholly for the purpose of taking time off or leave, whether statutory or contractual, to which the Agency Worker is otherwise entitled which is:
      1. ordinary, compulsory or additional maternity leave;
      2. ordinary or additional adoption leave;
      3. ordinary or additional paternity leave;
      4. time off or other leave not listed in paragraphs (iv)I, ii, or iii above; or
      5. for more than one of the reasons listed in paragraphs (iv)I, ii, iii to iv above;
   5. wholly due to the fact that the Agency Worker is required to attend at any place in pursuance to being summoned for service as a juror and the break is 28 Calendar Weeks or less;
   6. wholly due to a temporary cessation in the Hirer’s requirement for any worker to be present at the establishment and work in a particular role for a pre-determined period of time according to the established custom and practices of the Hirer;
   7. wholly due to a strike, lock-out or other industrial action at the Hirer’s establishment; or
   8. wholly due to more than one of the reasons listed in paragraphs (ii), (iii), (iv), (v), (vi) or (vii); and
3. the Agency Worker returns to work in the same role with the Hirer,

any weeks during which the Agency Worker worked for the Hirer before the break shall be carried forward and treated as counting towards the Qualifying Period with any weeks during which the Agency Worker works for the Hirer after the break. In addition, when calculating the number of weeks during which the Agency Worker has worked, where the Agency Worker has started working in a role during an Assignment and is unable to continue working for a reason described in paragraph (b)(iii) or (b)(iv)i., ii, or iii., for the period that is covered by one or more such reasons, the Agency Worker shall be deemed to be working in that role with the Hirer for the original intended duration or likely duration of the relevant Assignment, whichever is the longer. For the avoidance of doubt, time spent by the Agency Worker working during an assignment before 1 October 2011 [or 5 December 2011] does not count for the purposes of the definition of “Qualifying Period”.

“Temporary Work Agency” means as defined in Regulation 4 of the AWR being a person engaged in the economic activity, public or private, whether or not operating for profit, and whether or not carrying on such activity in conjunction with others, of:

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

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

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

***NOTES – delete these notes from the terms given to the Contractor***

All references in these notes to the Guidance are to the guidance on the AWR published by the Department for Business, Innovation and Skills on 27 May 2011 and available [here](https://www.gov.uk/government/publications/agency-workers-regulations-2010-guidance-for-recruiters) or the guidance on the Agency Workers (Northern Ireland) Regulations 2011 published by the Department of Employment and Learning Northern Ireland on 13 October 2011 and available [here](https://www.delni.gov.uk/publications/agency-workers-regulations-ni-guidance).

The REC has also produced a series of [AWR Factsheets](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Transparency-in-Supply-Chains-Reporting-Requirement-Nov-2015.pdf) each looking at different AWR issues.

| **Note no.** | **Clause no.** | **Explanation** |
| --- | --- | --- |
|  | (Parties) | All companies have a registered company number. Though a company can change its name repeatedly, it cannot change its registered company number. So include the registered company number here to avoid future disagreements about which company provided its services.  Limited companies must have a registered office to which all post can be directed (and where it will be considered received by the company). Companies may also have a trading address which is different to the registered office address. You can state either the registered office or the trading address but if either address changes, the other party must be notified. |
|  | (Parties)  ”The Intermediary” | If the Intermediary is a Limited Liability Partnership insert the following on page 1.  [*Insert Intermediary’s* *name*] Limited Liability Partnership (registered LLP no. [*insert registered LLP no.*]) [trading as [*insert trading name if different]*] of [*address*] (“**the Intermediary**”). |
|  | (Parties)  ”Employment Business” | If the Employment Business is a Limited Liability Partnership insert the following on page 1.  [*Insert your business* *name*] Limited Liability Partnership (registered LLP no. [*insert registered company or LLP no.*]) [trading as [*insert trading name if different*]] of [*address*] (“**the Employment Business**”). |
|  | 1 (Definitions)  “AWR” | The Agency Workers Regulations 2010 apply in England, Scotland and Wales. They came into force on 1 October 2011. If supplying in England, Scotland and Wales only delete the text in square brackets.  The Agency Workers (Northern Ireland) Regulations 2011 apply in Northern Ireland. They come into force on 5 December 2011. If supplying in Northern Ireland only delete the reference to the Agency Workers Regulations 2010.  If supplying in all of England, Scotland, Wales and Northern Ireland keep references to both sets of regulations and delete the square brackets only. |
|  | 1 (Definitions)  “Conduct Regulations” | The Conduct of Employment Agencies and Employment Businesses Regulations 2003 apply in England, Scotland and Wales. If supplying in England, Scotland and Wales only delete the text in square brackets.  The Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 apply in Northern Ireland.  If supplying in Northern Ireland only delete the reference to the Conduct of Employment Agencies and Employment Businesses Regulations 2003 and remove “[and/ or “]  If supplying in all of England, Scotland, Wales and Northern Ireland keep references to both sets of regulations and delete the square brackets only. |
|  | 1 (Definitions)  “Data Protection Laws” | We have updated this to refer to the General Data Protection Regulation which came into effect on 25 May 2018 and the new Data Protection Act 2018.  For more detail see the [data protection section](https://www.rec.uk.com/legal-resources/legal-guide/data-protection) of the REC Legal Guide and [our factsheet on the General Data Protection Regulation](https://www.rec.uk.com/legal-resources/legal-guide/data-protection/Factsheet-EU-GDPR-Guide-March-2017-Official-x4.pdf). |
|  | 1 (Definitions)  “Deemed Direct Payment” | The employment business must deduct PAYE tax and NICs from the payment due to the Intermediary. To do this it must first calculate the “deemed direct payment” i.e. the gross sum due as a result of the agency worker providing their services. The method of calculating the deemed direct payment is set out in Section 61Q ITEPA as follows:  Step 1 – identify the gross sum claimed by the PSC (such as by invoice). Disregard VAT for the time being.  Step 2 – deduct the direct cost of any materials used in the provision of the individual’s services.  Step 3 – deduct any expenses which would have been deductible from the individual’s taxable earnings if (a) the individual had been employed by the client and (b) had met those expenses out of those earnings. (NB – this step is optional, the employment business can choose not to deduct expenses in which case the Agency Worker can claim them through self-assessment).  Step 4 – the balance is the deemed direct payment. If nil, or negative, there is no deemed direct payment. Add back any VAT disregarded at Step 1 and make payment.  The balance from step 4 is the sum which is subject to PAYE tax and NICs and on which employers’ NICs are calculated (subject to any thresholds).  **Please note the REC Legal team cannot advise on payroll processes.** |
|  | 1 (Definitions)  “Inside IR35” | **IR35 rules:**  The IR35 rules apply where:   * the individual supplied provides their services personally; * but works through an intermediary; and * meets the conditions set out in sections 51-53 and 61N 61O and 61P of ITEPA. * Section 51 – in relation to a company, the individual owns or has a beneficial interest in more than 5% the shares; * Section 52 – in relation to a partnership, s/he is entitled to more than 60% of the profits of the partnership; * Section 53 – in relation to a sole trader, that payment received is reasonably to be taken as remuneration for services provided by the sole trader to the client.   The Finance Bill 2021 has introduced ‘non-material interest in a company’ to the Conditions of Liability and the IR35 rules will apply where the worker has a non-material interest in the company if they have 5% or less shares in a company or   * the worker has received, has rights entitling them to receive or expects to receive, a chain payment from the intermediary and * the chain payment does not or will not wholly constitute employment income of the worker   One of these conditions of liability (material or non-material interest) must be met in order to apply the IR35 rules in the first place.  **Assessing status for tax purposes:**  Once it is established that the IR35 rules apply, then the assignment must be assessed to check whether it is ”Inside” or “Outside” IR35. An assignment will be “Inside IR35” where but for the existence of the intermediary the individual supplied would be deemed to be an employee of the end user client for tax purposes.  Note that office holder roles are automatically deemed to be Inside IR35 where the services provided relate to that role (Section 61M(1)(ii) ITEPA)).  **Liability to deduct PAYE tax and NICs:**  From 6 April 2017, where the client is a public authority and the assignment is Inside IR35, the Employment Business should deduct PAYE tax from that individual’s pay. Equivalent legislation requires the deduction of national insurance and the payment of employers’ NICs. |
|  | HMRC’s Employment Status Tool | HMRC have produced an [employment status checker](https://www.gov.uk/guidance/check-employment-status-for-tax) to enable the Hirer to make its IR35 Status Decision. The tool asks a range of questions including on the nature of the assignment such as:   * what type of intermediary the temporary worker works through (personal services company, partnership or as a sole trader); * whether the role is an office holder role; * substitution – is it allowed, who would pay a substitute?; * supervision, direction or control – how much the Client will exert on the temporary worker; * materials – does the temporary worker provide any materials whilst providing their services; * integration – is the temporary worker integrated into the client’s workforce.   The result will be either (a) the individual is an employee for tax purposes, (b) the individual is not an employee for tax purposes or (c) an indeterminate result. The party completing the tool can add some identifiers at the end of the test in order to identify which assignment it relates to. **HMRC have said they will stand by the test results provided the correct information was inputted.**  **Reasons for Hirer’s IR35 Status Decision:**  The Employment Business can request in writing that the Hirer provides its reasons for coming to its decision. The Hirer must then respond in writing within 31 days (Section 61T(5) ITEPA). If the Hirer does not confirm the status of the assignment or give its reasoning within the required timescales, liability to deduct PAYE tax and NICs will transfer to the Hirer. However, we consider this time period excessive and so the terms of business with the Hirer allow the Employment Business to terminate the Assignment if it does not receive the Hirer’s reasons, but gives the option of reducing this to a shorter period if required e.g. 7 days. |
|  | 1 (Definitions)  “Intermediaries Legislation” | This is commonly known as “IR35”. The rules are set out in sections 48 – 61 ITEPA. See also Notes [8 and 14]. |
|  | 1 (Definitions)  “Minimum Rate” | It is a requirement of the Conduct Regulations that you set out the minimum rate of remuneration that the Employment Business reasonably expects to achieve, for all hours worked by the work-seeker. See clause 6.2.4. |
|  | 1 (Definitions)  “Net Pay” | See Note 7 re the “Deemed Direct Payment”. The Net Pay is the balance payable to the Intermediary on behalf of the Agency Worker following Deductions. |
|  | 1 (Definitions)  “NICs Legislation” | The Social Security (Miscellaneous Amendments No. 2) Regulations 2017 amend the Social Security Contributions (Intermediaries) Regulations 2000 which require the deduction of employee’s national insurance contributions when assignment is an Inside IR35 assignment. |
|  | 1 (Definitions)  “Outside IR35” | The assignment will be outside IR35 where the contractor does not personally provide services and removing the intermediary from the supply chain, the individual would not be deemed to be an employee of the end user client for tax purposes. In this case, the intermediary is responsible for tax and NICs.  Office holder roles are deemed to be Inside IR35 (Section 61M(1)(ii) ITEPA).  See also Notes 8 and 9. |
|  | 1 (Definitions)  “Public Authority” | From 6 April 2017 new IR35 rules apply to the public sector. They will apply where the end user client is a “public authority” which is:   1. defined in the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2002; or 2. the Corporate Officer of the House of Commons or the House of Lords, the National Assembly for Wales Commission or the Northern Ireland Assembly Commission.   Public authorities are listed in the Schedule to each of the acts listed at (a). However names can be added or removed from the Schedules over time.  Importantly an organisation will be a public authority for IR35 purposes even if only some of its activities are covered by the FOIA.  HMRC advise that outsourced services are excluded from the changes though this is not expressly stated in the legislation. Nor is there a definition of outsourced service though HMRC guidance gives some examples. REC recommends that members do not advise their clients on whether they are a public authority (or not) for the purposes of these rules – it is for the client to advise the employment business. Importantly, there is no statutory obligation on the client to advise whether it is a public authority and so we have inserted a statement into this contract to confirm that it is. |
|  | 1 (Definitions)  “Relevant Period” | The Relevant Period is set by Regulation 10 of the Conduct Regulations and thus cannot be changed even by agreement between the Employment Businesses and the Hirer. |
|  | 1 (Definitions)  “Reporting Requirements” and “Specified Intermediary” | The Income Tax (Pay as you Earn) (Amendment No. 2) Regulations 2015 came into force on 6 April 2015. They require the “Specified Intermediary” to report on payments made to all temporary workers not already reported via the Specified Intermediary’s RTI report. The Specified Intermediary could be a vendor (which doesn’t have a direct contract with the limited company) or could be an Employment Business which does. Under this contract, the Employment Business will deduct PAYE tax and NICs and will report this under RTI. This means the Employment Business will not have to report the net payment made to the Intermediary via the quarterly ITEPA reporting. However where there is a vendor, it will be a will be a Specified Intermediary – therefore that party will have to report the required information to HMRC and so it will require the relevant information from the Employment Business/ Intermediary. REC has produced various guidance notes including a guide explaining to contractors why the employment business is asking for certain information. Full details are available [here](https://www.rec.uk.com/legal-resources/factsheets-and-guides). |
|  | 1 (Definitions) “Transparency Regulations” | See also clause 5.1.16.  Section 54 of the Modern Slavery Act 2015 introduced a new statutory obligation on large businesses to publish an annual statement on the steps they are taking to ensure that modern slavery and human trafficking are not taking place within their business operations and their supply chain. The Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015 which came into effect on 29 October 2015 build on Section 54 and provide more detail on the requirements.  This new reporting requirement applies to commercial organisations which:   * are incorporated (either a public or private company) or a partnership; * supply goods and/or services in the UK (even if incorporated outside the UK); and * have an annual turnover of at least £36 million.   If it meets the above criteria, the Employment Business may be required to comply with the new reporting requirement itself. Alternatively it may have to comply with a request by a vendor or client which itself has to publish the statement. Either way, this will mean that the Employment Business will have to ask the relevant questions of its own supplies, including the Intermediary.  For more detailed information please see the [Transparency in Supply Chains Reporting requirements factsheet](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Transparency-in-Supply-Chains-Reporting-Requirement-Nov-2015.pdf). |
|  | 1 (Definitions) “Type of Work” | It is a requirement of Regulation 14 of the Conduct Regulations that you agree in writing the type of work which the Intermediary is seeking Assignments for. |
|  | 1 (Definitions)  “WTR” | The Working Time Regulations 1998 apply in England, Scotland and Wales. If supplying in England, Scotland and Wales only delete the text in square brackets.  The Working Time (Northern Ireland) Regulations 1998 apply in Northern Ireland. If supplying in Northern Ireland only delete the reference to the Working Time Regulations 1998.  If supplying in all of England, Scotland, Wales and Northern Ireland keep references to both sets of regulations and delete the square brackets only. |
|  | 2.1  (The Agreement) | This agreement govern all assignments between the Employment Business and the Intermediary. |
|  | 2.2  (The Agreement) | This statement is required to comply with Regulation 15 of the Conduct Regulations. These terms are a contract for services and not a contract of employment. |
|  | 2.2  (The Agreement) | Members should make sure to see the contract between the Intermediary and the Agency Worker so that they are satisfied that it meets legislative requirements and does not create additional liability for the Employment Business. |
|  | 2.4  (The Agreement) | It is a requirement of the Conduct Regulations that you state you are acting as an employment business i.e. you are supplying temporary staff.  Use the reference to the Employment Agencies Act 1973 if supplying in England, Wales or Scotland.  Use the reference to the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 if supplying in Northern Ireland. |
|  | 3.6 (Assignments) | To ensure that an Intermediary is aware of any agreement for a fee or extended period of hire in relation to a direct engagement with a Hirer the REC recommends that this clause is inserted into the Intermediary’s terms of engagement. It is essential under the REC Code of Professional Practice that this information is given in writing to each Intermediary before the Agency Worker is sent on Assignment. |
|  | 3.7 (Entitlements under the AWR) | Rights subject to completion of the Qualifying Period:  Under the AWR, on completion of the 12-week qualifying period (see the definition of “Qualifying Period” in clause 1.1 and the Schedule), an agency worker is entitled to equal treatment in respect of pay and working conditions. Working conditions include (amongst other things) terms and conditions relating to the duration of working time, night work, rest periods and rest breaks (Regulation 6(1) of the AWR). The Agency Worker will be entitled to different terms and conditions relating to the duration of working time, night work, rest periods and/or rest breaks (other than the rights and entitlements relating to the same under the Working Time Regulations) as if s/he had been directly hired by the Hirer.  Subject to breaks taken the earliest date an agency worker can qualify for equal treatment was 24 December 2011 in England, Scotland and Wales or 27 February 2012 in Northern Ireland.  Day One rights:  From day one of the assignment, the Agency Worker has the following rights:   1. to be treated no less favourably than a comparable employee or worker of the Hirer in relation the collective facilities and amenities (e.g. canteen, childcare facilities and transport services) provided by the Hirer (unless the Hirer can justify less favourable treatment on objective grounds); and 2. the right to be informed by the Hirer of any relevant vacant posts with the Hirer, to give the Agency Worker the same opportunity as a comparable employee or worker of the Hirer to find permanent employment with the Hirer.   The Hirer will be liable for any failure to provide these Day One rights.  Form G sets out the information from the hirer of the terms and conditions they would have given to the agency worker if they had recruited the worker directly. |
|  | 3.8 (Agency Worker employed by the Intermediary on a “pay between assignments contract pursuant to Regulation 10 of the AWR) | If the Intermediary is a Temporary Work Agency (see the definition in clause 1.1 and the Schedule), the Intermediary might, particularly if the Intermediary is an umbrella company, employ the Agency Worker as an employee under a “Swedish Derogation”/“pay between assignments” compliant contract pursuant to Regulation 10 of the AWR to circumvent legitimately the obligation to provide equality of pay under Regulation 5 of the AWR. The Agency Worker will not be entitled to equality of pay, hence the obligation on the Intermediary to notify you of this in clause 3.7. See clauses 8.2, 8.3, 8.4 and 8.9 and related Notes in this respect.  Please see [REC AWR Factsheet 7](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Factsheet-7-Employed-agency-workers-when-does-equal-treatment-not-apply-2015.pdf) and the Guidance for information on “Swedish Derogation”/”pay between assignments” contracts of employment. |
|  | 4.1.4 (Warranties and Intermediary Obligations) | The Agency Worker must have a material interest in the intermediary in order to apply the IR35 rules in the first place.  See Note 8 for more detail. |
|  | 4.1.8  (Warranties – data protection) | The General Data Protection Regulation will come into effect in May 2018. This will impose new obligations on data controllers and processors whilst giving individuals new rights and strengthening others.  We have removed the warranty whereby the Agency Worker consents to the processing of their personal data. Consent is just one legal basis for processing data, another legal basis may be more appropriate. However where an organisation wants to rely on consent it should “unbundle” that consent from terms and conditions and obtain consent on a separate document (see REC Model Document DP6 – Consent Form).  We have inserted a new provision whereby the Intermediary warrants that both it and the Agency Worker will comply with the Data protection Laws. The Intermediary will be either a data controller, or a data processor or both and the Employment Business needs to know that the Intermediary manages personal data correctly. The Agency Worker may access the personal data of other data subjects whilst on assignment and so should be aware that in those circumstances it must also manage personal data correctly. |
|  | 5.1.11 (Intermediary’s Obligations) | The Employment Business will make a Deemed Direct Payment to the Agency Worker having already deducted PAYE tax and NICs. It must have a correct national insurance no. and up to date PAYE tax code. If it does not have an up to date tax code it will have to deduct tax subject to the OT or BR codes – these are emergency tax codes so it is in the Agency Worker’s interests to provide these as soon as possible. |
|  | 5.1.15 (Intermediary’s Obligations) | The Employment Business should be satisfied that the Agency Worker has been engaged on appropriate terms which meet all relevant legislative requirements. |
|  | 5.2 (Intermediary’s Obligations) | Qualifying Period:  An agency worker will be entitled to equal treatment in respect of pay and working conditions if s/he has completed the 12 week qualifying period (see the definition of “Qualifying Period” in clause 1.1 and the Schedule) by working in the same role with the same hirer for 12 Calendar Weeks (see the definition of “Calendar Week” in clause 1.1), during one or more assignments (Regulation 7 of the AWR). Certain breaks will only suspend the 12-week qualifying clock. These are set out in the Schedule. **Any weeks worked prior to 1 October 2011 (in England, Scotland and Wales) or 5 December 2011 (in Northern Ireland) do not count towards the 12 week qualifying period.**  12 continuous calendar weeks:  The AWR provide that the agency worker achieves the qualifying period by working ‘in the same role for the same hirer for 12 continuous calendar weeks during one or more assignments.’  The AWR say that ‘any week during the whole or part of which an agency worker works is counted as a calendar week.’  The AWR do not define ‘week’ nor do they specify that for example, a week commences on a Monday or Sunday etc. We have taken the view, based on the available guidance that the week is a seven day period which begins with the start day of the agency worker’s assignment.  However it is clear that the qualifying period for the agency worker is tied to the time that the agency worker is supplied to the particular hirer rather than to the particular employment business that the agency worker works through. On balance it could be argued to be inconsistent with the AWR if the start day of the agency worker’s qualifying weeks changed each time he or she moved employment business (while being supplied in to the same role with the same hirer). In the absence of any clear advice/guidance to the contrary we have taken the view that if the agency worker starts an assignment with a hirer on a Tuesday for example, a qualifying week will be achieved if the agency worker works in that assignments on any day in a seven day period starting from the Tuesday, regardless of whether he or she moves to a different employment business.  Same role:  An agency worker works “in the same role” unless: (a) the agency worker has started a new role with the same hirer, whether supplied by the same or a different temporary work agency; (b) the work or duties that make up the whole or the main part of that new role are substantively different from the work or duties that made up the whole or the main part of the previous role; and (c) the temporary work agency has informed the agency worker in writing of the type of work the agency worker will be required to do in the new role (Regulation 7(3) of the AWR). The temporary work agency can do this by giving the agency worker a new assignment details form.  The agency worker only has to work in the same role for the same hirer for 12 weeks in order to complete the Qualifying Period, but this could be via one or more temporary work agencies. The Employment Business therefore needs to be informed by the Intermediary whether the Agency Worker has worked in the same role with the relevant Hirer via any third party so that the Employment Business can assess whether the Agency Worker has already acquired qualifying weeks or has already completed the 12 week qualifying period (clause 5.2).  Please see [REC AWR Factsheet 3](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Factsheet-3-How-does-an-agency-worker-qualify-for-equal-treatment-2015.pdf) and the Guidance for more information.  Subject to breaks taken the earliest date an agency worker could qualify for equal treatment was 24 December 2011 in England, Scotland and Wales or 27 February 2012 in Northern Ireland.  Anti-avoidance measures:  The AWR contain anti-avoidance measures (Regulation 9) to prevent temporary work agencies or their clients/hirers structuring assignments in such a way as to prevent an agency worker from acquiring the 12-week qualifying period for equal pay and working conditions. The Employment Business therefore needs to be informed of the matters set out in clause 5.2.3 so that the Employment Business can assess whether previous assignments with the Hirer have been structured in such a way as to attempt to avoid the application of the AWR and so the Agency Worker will be deemed to have completed the 12-week qualifying period.  Please see [REC AWR Factsheet 5](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Factsheet-5-Liability-for-breach-of-the-AWR-2017-officially-updated.pdf) and the Guidance for more information. |
|  | 5.2.1 and 5.2.3  (Agency Worker’s Obligations) | If supplying the worker in England, Scotland and Wales, delete the text in square brackets. |
|  | 5.5 (Intermediary’s Obligations) | If you suffer any loss as a result of the Intermediary’s acts or omissions you may not recover these from the Intermediary by way of deductions from fees owed to them but must make a separate claim for damages, if necessary in a court of law.  “Losses” is defined quite broadly. The specific reference to clauses 4 and 5 means that Losses could incur as a result of a range of acts or omissions including for example breach of the AWR or tax/ NICs legislation. |
|  | 6.2 (Obligations of the Employment Business) | For each individual Assignment the Employment Business must confirm all the information set out in Clause 6.2to comply with Conduct Regulation 21 and can do so using the Model REC Assignment Details Form (Document B). |
|  | 7.2 (Timesheets) | Regulation 15 of the Conduct Regulations requires that the employment business includes within the terms with the contractor an undertaking that the employment business will pay the contractor for work done by the contractor whether or not it is paid by the Hirer in respect of that work. |
|  | 7.3 (Timesheets) | Regulation 12 of the Conduct Regulations provides that the employment business may not withhold payment from a contractor for hours that the contractor has actually worked. You need to be aware that if a client refuses to sign a timesheet, payment will nevertheless be due to the Intermediary unless your proper and reasonable investigations provide clear evidence that the Intermediary did not work those hours. Make sure you keep any evidence in the form of documents or a statement from the Hirer in case you receive a claim for deductions from the Intermediary.  In addition please note that under Regulation 12 you may not reduce an Intermediary’s hourly rate or otherwise refuse to pay him for all or any part of the hours actually worked in circumstances where the Intermediary has failed to complete a whole assignment, has been late for an assignment or for any other reason. The Intermediary must always be paid for hours actually worked regardless of any extraneous circumstances. |
|  | 8.1 (Paying the Intermediary) | The Employment Business must deduct PAYE tax and NICs before it makes a payment to the Intermediary. It is for the Intermediary to then ensure the Agency Worker receives his/ her pay.  The Employment Business must have the Agency Worker’s national insurance no. and PAYE tax code in order to be able to make the appropriate deductions. If the Agency Worker does not provide an up to date tax code, the Employment Business must use either tax codes OT or BR. See [HMRC’s technical guidance](https://www.gov.uk/government/publications/off-payroll-working-in-the-public-sector-reform-of-the-intermediaries-legislation-technical-note/off-payroll-working-in-the-public-sector-reform-of-the-intermediaries-legislation-technical-note) for further detail. |
|  | 8.1 (Paying the Intermediary) | The Conduct Regulations require you to inform the Intermediary of the minimum rate of remuneration that the Employment Business reasonably expects to achieve, for all hours worked by the work-seeker. See clause 6.1 and the definition of Minimum Rate in clause 1.1. You can notify the Intermediary of the actual rate prior to the start of the Assignment in the relevant Assignment Details Form. |
|  | 8.2 (Paying the Intermediary) | Under the AWR, after completing the 12 week qualifying period (see the definition of “Qualifying Period” in clause 1.1 and the Schedule), an agency worker is entitled to equal treatment in respect of pay and working conditions. If the Agency Worker has completed the Qualifying Period at the start of the relevant assignment and consequently the Employment Business is already paying Intermediary Fees which satisfy the equal treatment requirements in respect of pay, clause 8.2 allows the Employment Business to vary the Intermediary Fees if the Hirer subsequently varies the pay of a direct hire. Clause 8.2 allows the Employment Business to vary the Intermediary Fees when the Agency Worker completes the Qualifying Period in order to satisfy the equal treatment requirements in respect of pay and thereafter if the Hirer subsequently varies the pay of a direct hire.  Please see the Guidance and [REC AWR Factsheets 3](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Factsheet-3-How-does-an-agency-worker-qualify-for-equal-treatment-2015.pdf) and [4](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Factsheet-4-What-is-equal-treatment-August-2015.pdf) for more information, in particular on what constitutes “pay”.  However, if the Intermediary is a Temporary Work Agency (see the definition in clause 1.1 and the Schedule), the Intermediary might, particularly if the Intermediary is an umbrella company, employ the Agency Worker as an employee under “a “Swedish Derogation” / “pay between assignments” compliant contract pursuant to Regulation 10 of the AWR to circumvent legitimately the obligation to provide equality of pay under Regulation 5 of the AWR. The Agency Worker will not be entitled to equality of pay hence the qualification at the beginning of clause 8.2.  Please see [REC AWR Factsheet 7](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Factsheet-7-Employed-agency-workers-when-does-equal-treatment-not-apply-2015.pdf) and the Guidance for information on “Swedish Derogation”/ “pay between assignment” contracts of employment. |
|  | 8.3 (Paying the intermediary) | Under the AWR, after completing the 12-week qualifying period (see the definition of “Qualifying Period” in clause 1.1 and the Schedule), an agency worker is entitled to equal treatment in respect of pay and working conditions. Pay includes holiday pay and working conditions include terms and conditions relating to annual leave (Regulations 6(1) and (2)). An agency worker will be entitled to the same payment for annual leave (including over and above the minimum entitlement under the Working Time Regulations) as if s/he had been directly recruited by the Hirer. This includes the same terms and conditions relating to annual leave as a direct recruit of the Hirer, including the ability to take any leave entitlement over and above the minimum entitlement under the Working Time Regulations. BIS have confirmed in the Guidance that the Employment Business can make a payment in lieu of the Agency Worker taking any such additional leave and that this can be rolled up as part of the hourly/daily rate (if you do this we strongly recommend that it is itemised separately on the payslip) or given as a one off payment at the end of the assignment. However, under the AWR the agency worker is entitled to take any such paid additional leave, and so there is a risk in rolling up the payment as part of the hourly/daily rate or giving it as a one off payment at the end of the assignment. A risk-free approach would be to allow the agency worker to take the leave and pay the agency worker at that time. Please see [REC AWR Factsheet 4](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Factsheet-4-What-is-equal-treatment-August-2015.pdf) for more information and REC’s Legal Guide.  However, if the Intermediary is a Temporary Work Agency (see the definition in clause 1.1 and the Schedule), the Intermediary might, particularly if the Intermediary is an umbrella company, employ the Agency Worker as an employee under a ”Swedish Derogation” /”pay between assignments” compliant contract pursuant to Regulation 10 of the AWR to circumvent legitimately the obligation to provide equality of pay (including holiday pay) under Regulation 5 of the AWR. Where this is the case, the Agency Worker will be entitled to any additional annual leave but not to pay for that leave, hence the qualification in brackets in clause 8.3.    Please see [REC AWR Factsheet 7](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Factsheet-7-Employed-agency-workers-when-does-equal-treatment-not-apply-2015.pdf) and the Guidance for information on a “Swedish Derogation” / “pay between assignments” contracts of employment. |
|  | 8.4 (Paying the intermediary) | If the Intermediary is a Temporary Work Agency (see the definition in clause 1.1 and the Schedule), the Intermediary might, particularly if the Intermediary is an umbrella company, employ the Agency Worker as an employee under a “Swedish Derogation” / “pay between assignments” compliant contract pursuant to Regulation 10 of the AWR to circumvent legitimately the obligation to provide equality of pay under Regulation 5 of the AWR.  If the Intermediary employs the Agency Worker under such a contract of employment, the Agency Worker will still be entitled to the “day one” rights under the AWR (i.e. the right to be notified by the Hirer of the Hirer’s vacancies and access to the Hirer’s collective facilities and amenities). The Agency Worker will also still be entitled to receive equality of all other basic working and employment conditions under the AWR (e.g. the duration of working time, night work, rest periods, rest breaks and annual leave (but not to pay for that leave)) after the Agency Worker has completed the Qualifying Period as if s/he were engaged directly by the Client or on the same terms as a comparable employee or worker of the Hirer. The Agency Worker will not be entitled to equality of pay, including any bonus, hence the qualification at the beginning of clause 8.4.  Please see [REC AWR Factsheet 7](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Factsheet-7-Employed-agency-workers-when-does-equal-treatment-not-apply-2015.pdf) and the Guidance for information on “Swedish Derogation” / “pay between assignments” contracts of employment.  If the Agency Worker is not employed by the Intermediary under a “Swedish Derogation” / “pay between assignments” contract of employment, the Agency Worker may be entitled to a bonus.  Please see [REC AWR Factsheet 5](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Factsheet-5-Liability-for-breach-of-the-AWR-2017-officially-updated.pdf) and the Guidance for information on bonuses.  The AWR do not require hirers to assess agency workers for the purpose of awarding a bonus to which the Agency Worker may be entitled under the AWR or to integrate agency workers into their performance appraisal systems. However, we recommend this. If the Hirer integrates the Agency Worker into its performance appraisal system, this should not of itself affect the Agency Worker’s employment status and the Employment Business can allay this potential fear of the Hirer. For more information on bonuses and the integration of agency workers into hirers’ appraisal systems, please see the Guidance. |
|  | 9.1  (Term and Termination) | Conduct Regulation 15(c) requires that the work seeker knows what notice is required before workfinding services can be given - here we state that no notice is required. If a different notice period is required this be dealt with as a contract variation under clause 2.3 (practically then state the alternative notice period in the Assignment Details Form). |
|  | 9.2.9 (Term and termination) | The period chosen should be reasonable in the circumstances, taking into account any time limit imposed for completion of the services and the urgency of the works. The time period should be consistent with the Client terms. |
|  | 9.2.10 (Term and termination) | Whilst it may be difficult to evidence this, the Employment Business will want to minimise its liability for any failure by the Intermediary to deduct PAYE or NICs where these were due. |
|  | 9.2.12  (Term and termination) | The Employment Business will want to be able to terminate the Assignment is the circumstances change so that the Assignment becomes an Outside IR35 assignment, in which case the Employment Business will not be required to deduct PAYE tax and NICs. |
|  | 9.2.14 (Term and Termination – data protection) | The General Data Protection Regulation (GDPR) applies across the EU from 25 May 2018. It builds upon existing data protection law in order to reflect technological change and the level and types of personal data collected by organisations. Organisations must have a legal reason for processing personal data.  Article 82 of the GDPR provides that an individual who suffers damage as a result of a breach of the GDPR is entitled to compensation from the party that committed that breach. Where there is more than one data controller or processor each will be held liable for the entire damage to ensure that the individual receives appropriate compensation.  Where the Intermediary or Agency Worker breach the Data Protection Laws, the Employment Business will want to limit any further liability and so may wish to terminate the contract. |
|  | 13.1 (Contract Monitoring and Audits) | REC advises the Employment Business to regularly audit all Intermediaries it engages with to ensure compliance with all relevant legislation. The Employment Business may also want to check compliance with ID checking and right to work requirements, GLA licensing (if applicable), and contractual arrangements in place between the Intermediary and the Agency Worker. The Employment Business may wish to operate include more detailed contract monitoring or audit requirements in a separate schedule (in which case amend clause 13 to refer to the schedule). |
|  | 13.2 (Contract Monitoring and Audits) | The audit should not be a phishing exercise but should be sufficiently detailed to allow the Employment Business to satisfy itself that the Intermediary meets all of its statutory obligations to the Agency Workers, including in particular in relation to tax and NICs.  The REC has prepared an Intermediary checklist for members to use when doing due diligence on intermediary companies. Please see <https://www.rec.uk.com/legal-resources/model-document-library/checklists-and-diagrams>. |
|  | 14.1.2 (Liability) | It is important that the Intermediary holds the appropriate insurances, at appropriate levels for the duration of the assignment and following termination of the Assignment. The nature of the services to be delivered will determine what is appropriate in terms of type, level and duration. REC recommends that the Employment Business speaks with both its client and insurers to establish what is appropriate. |
|  | 15  (Indemnity) | The General Data Protection Regulation (GDPR) applies across the EU from 25 May 2018. It builds upon existing data protection law in order to reflect technological change and the level and types of personal data collected by organisations. Organisations must have a legal reason for processing personal data.  Article 82 of the GDPR provides that an individual who suffers damage as a result of a breach of the GDPR is entitled to compensation from the party that committed that breach. Where there is more than one data controller or processor each will be held liable for the entire damage to ensure that the individual receives appropriate compensation. Therefore we have included this indemnity from the Intermediary to the Employment Business to protect the Employment Business against any losses it incurs because of the Intermediary’s or the Agency Worker’s breach of the Data Protection Laws. Intermediaries may push back but the indemnity is limited to losses incurred as a result of *their* breach of the GDPR and not any breach. We have not included a reciprocal indemnity from the Employment Business to the Intermediary but they may request this from you. If you do agree to give such an indemnity, again limit it to any losses as a result of your breach of GDPR and do not indemnify the Intermediary for their own breaches. Please check with your insurer before you give any indemnities. |
|  | (Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE)) | We have deleted the TUPE clause which appeared in previous versions of this contract. This is because any obligations which arise under TUPE will arise whether there is a contractual provision or not. However it is worth keeping this note in as a reminder of how TUPE works.  The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) provide that where there is a “relevant transfer”, all of the employees in the relevant business (the transferor) will automatically transfer to the new owner (the transferee) and their terms and conditions of employment are preserved except for some rights relating to pensions.  A “relevant transfer” occurs when:   * + a business, undertaking or part of it, is transferred from one employer to another as a going concern (“referred to as a “business transfer”); and/or   + when there is a service provision change.   TUPE applies to the transfer of an undertaking situated in the UK or in the case of a service provision change where the organised grouping of employees is situated in the UK immediately before the transfer.  This provision has been included because temporary workers employed by an umbrella company *could* be an organised group for TUPE purposes.  For further information on TUPE please see the REC Legal Guide. Members who may be faced with a TUPE transfer should seek detailed external advice. |
|  | 19 (Governing Law) | Delete as appropriate to your main jurisdiction. |
|  | Date and Signature clause | If the Intermediary is a limited liability partnership, change “Ltd.” to “LLP”. |
|  | Signature clause | It is a requirement of the Conduct Regulations that you agree your Terms with the Intermediary before you provide them with work-finding services. To ensure that the Intermediary accepts your terms it is important to (1) exclude any other terms, including the Intermediary’s own terms (if any) and (2) to obtain a signature from the Intermediary. This agreement should be signed by a director or company secretary of the Intermediary’s limited company and not the individual supplied to do the work unless they also hold one of these offices and have authority to sign the terms on behalf of the company. If you do not have a signature, you can still imply that the Intermediary has accepted your terms if they continue to provide services to your clients or have accepted them in an email. However, signed terms are always preferable to impliedly accepted terms. |
|  | Schedule  (Qualifying Period) | Regulation 8 of the AWR provides that an Agency Worker who completes the Qualifying Period will be entitled to equal treatment in respect of pay and working conditions. Regulation 7 provides that an Agency Worker will complete the Qualifying Period when s/he completes 12 Calendar Weeks (see the definition of “Calendar Week” in clause 1.1) on assignment in the same role with the same hirer.  Regulation 7 also provides for the Agency Worker to take some breaks during an Assignment. The general rule is that breaks of 6 weeks or less will only pause the qualifying clock. In certain specified circumstances, breaks of more than 6 weeks will pause but not stop the clock.  There are also certain provisions regarding a break in an assignment during the Protected Period for a pregnant agency worker whose clock continues to run even though not working during the assignment.  All of these provisions are set out in the Schedule.  Subject to breaks taken the earliest date an agency worker can qualify for equal treatment was 24 December 2011 in England, Scotland and Wales or 27 February 2012 in Northern Ireland. |
|  | New rights for pregnant agency workers | This note does not refer to any specific provision but its contents are worth noting here.  Please refer to [REC AWR Factsheet 6](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Factsheet-6-Maternity-rights-under-the-AWR-2015.pdf) and the Guidance for information on the rights under the AWR of pregnant agency workers and those who are new mothers or who are breastfeeding after they have completed the 12 week qualifying period. These rights include paid time off to attend ante-natal medical appointments and ante-natal classes; the right to be offered suitable alternative work (paid at the same rate as the original assignment) by you if the hirer cannot make reasonable adjustments and the agency worker cannot complete the original assignment for health and safety reasons; and the right to be paid by you for the remaining duration of the original assignment if you cannot find suitable alternative work. Though both the Employment Business and the Intermediary are Temporary Work Agencies for the purposes of AWR and therefore share responsibility, the Intermediary as her employer bears primary responsibility for compliance with these rights. However it may seek repayment by the employment business or a higher pay rate to cover anticipated costs.This is a commercial negotiation between the two parties.  Note the potential financial impact on your business if such an agency worker cannot complete an assignment for health and safety reasons and you cannot find suitable alternative work for the agency worker. The REC considered including a clause in Contract 3 between you and the hirer under which the hirer has to pay you for the remaining duration of the original assignment in these circumstances (so that you can pay the Intermediary), but concluded that hirers are unlikely to agree to such a clause. However, the REC recommends that you consider trying to negotiate this kind of clause into the contract between you and the hirer.  Please be aware of, and do not accept, any potentially discriminatory instructions from hirers re the supply of female workers or pregnant agency workers. Such instructions could leave you open to sex discrimination claims under existing anti-discrimination legislation. |

| ***Delete this Annex from the terms given to the Intermediary***  **Annex 1 – Amendments**  We list here the main amendments rather than every word. We recommend that members adopt the amended terms in their entirety rather than amend individual provisions. | | | |
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| **Clause** | **Related Note** | | **Description** |
| **Amendments made March 2021 (to April 2018 version)** | | | |
| 4.1.4 -  Warranties provided by the Intermediary  5.1.14 –  The Intermediary’s obligations  9.2.12  Term and Termination | 8 | Updated to reflect the Conditions of Liability changes in the 2021 Finance Bill. | |
| **Amendments made April 2018 (to March 2017 version)** | | | |
| 1 Definition of “Data Protection Laws” |  | | We have updated this to refer to the General Data Protection Regulation which came into effect on 25 May 2018 and the new Data Protection Act 2018. |
| 3.10 – Relationship |  | | This is a new provision. |
| 4.2 – Warranty – data protection | 29 | | We have deleted clause 4.2 which was a warranty from the Intermediary to the Employment Business that the Agency Worker consented to the processing of their personal data. Consent is just one legal basis for processing personal data –the Employment Business cannot require the Agency Worker to give consent to the processing of their data but may rely on another legal basis. Instead the Employment Business should set out in a privacy notice the legal basis which it will rely to process personal data, and if it wants to rely on consent, use a separate consent form. |
| 9.1  (Termination) | 43 | | The previous version of this agreement stated that the notice period would be set out in the Assignment Details Form. However the work seeker must be told the notice period required before the employment business can provide work finding services. Therefore we have said no notice is required, though this can be varied under clause 2.3. |
| 9.2.14 (Term and termination) | 47 | | This is a new provision to reflect the liability provisions of the GDPR. |
| 15  (Indemnity) |  | | We have updated this by referring specifically to the Data Protection Laws and any breaches by the Intermediary or Agency Worker. |