



April 2024

Terms of Business for the Supply of Temporary Workers

Please find below our Terms of Business to which we draw your specific attention. Please to return a copy signed by an authorised officer of your organisation and confirm acceptance of the terms of all future ordering purposes. Please note that any order placed hereafter is only ever accepted on the basis of these terms whether or not you have returned a signed copy. A copy of these Terms along with the Confirmation Report will be placed on file as proof of you having received them.

Between _____ T/A Driver Hire
(hereinafter called the Employment Business)
and _____
(hereinafter called the Client)

1. DEFINITIONS

1.1. In these Terms of Business the following definitions apply: -

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| "Agency Worker" | means the individual temporary worker whose services and/or attendance are supplied/arranged and/or is introduced by the Employment Business to provide services to the Client whether offered by the Employment Business or requested by the Client; |
| "Assignment" | means the period during which the Agency Worker is supplied to render services to the Client; |
| "Assignment Details Form" | means written confirmation of the assignment details, whether named assignment details form, client booking form or otherwise, agreed with the Client prior to commencement of the Assignment; |
| "AWR" | means the Agency Workers Regulations (Northern Ireland) 2011; |
| "AWR Claim" | means any complaint or claim to a tribunal or court made by or on behalf of the Agency Worker against the Client and/or the Employment Business for any breach of the AWR; |
| "Calendar Week" | means any period of seven days starting with the same day as the first day of the First Assignment; |
| "Charges" | means the hourly charges of the Employment Business calculated in accordance with clause 3.1 and as may be varied from time to time in accordance with these Terms; |
| "Client" | means any person, firm or corporate body together with any subsidiary or associated company as defined by the Companies Act 2006 to whom the Agency Worker is supplied or introduced; |
| "Client's Group" | means (a) any individual, company, partnership, statutory body or other entity which from time to time Controls the Client, 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 Client, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006; |
| "Comparable Employee" | means as defined in Schedule 1 to these Terms; |
| "Conduct Regulations" | means the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005; |
| "Confidential Information" | means any and all confidential commercial, financial, marketing, technical or other information or data of whatever nature relating to the Client or Employment Business or their business or affairs (including but not limited to these Terms, 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 Agency Worker or any third party in relation to the Assignment by the Client or the Employment Business or by a third party on behalf of the Client whether before or after the date of these Terms 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 Legislation" | the Data Protection Act 2018 and unless and until the General Data Protection Regulation ((EU) 2016/679) ("GDPR") is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and any successor legislation to the GDPR or the Data Protection Act 2018; |
| "Engagement" | means the engagement, employment or use of the Agency Worker by the Client or by any third party to whom the Agency Worker has been introduced by the Client, directly by the Client or any third party or through any other employment business on a permanent |



**“EU Drivers Hours Rules”
“First Assignment”**

or temporary basis, whether under a contract of service or for services; an agency, license, franchise or partnership arrangement; or any other engagement; directly or through a limited company of which the Agency Worker is an officer or employee. The words “engages” and “engaged” are to be construed accordingly;
means the European Community Drivers’ Hours Regulation (EC) 561/2006;
means:

- (a) the relevant Assignment; or
- (b) if, prior to the relevant Assignment:
 - (i) the Agency Worker has worked in any assignment in the same role with the relevant Client as the role in which the Agency Worker works in the relevant Assignment; and
 - (ii) the relevant Qualifying Period commenced in any such assignment,
that assignment (an assignment being (for the purpose of this defined term) a period of time during which the Agency Worker is supplied by one or more Temporary Work Agencies/Employment Businesses to the relevant Client to work temporarily for and under the supervision and direction of the relevant Client);

“Introduction”

means

- (a) the Client’s interview of a Agency Worker in person or by telephone, following the Client’s instruction to the Employment Business to supply a Agency Worker; or
- (b) the passing to the Client of a curriculum vitae or information which identifies the Agency Worker; and which leads to an Engagement of that Agency Worker;

“Introduction Fee”

means the fee payable in accordance with clause 9.2 below and Regulation 10 of the Conduct Regulations;

“Losses”

means all losses, liabilities, damages, costs, expenses whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands;

“Other Work”

means all activities which are defined as working time under the Working Time Directive except driving and includes any work within or outside the transport industry where the Agency Worker is not at the disposal of the Client;

“Mobile Worker”

means any worker forming part of the travelling staff, including trainees and apprentices, who is in the service of an undertaking which operates transport services for passengers or goods by road for hire or reward or on its own account;

“Periods of Availability”

means periods of waiting time as defined under the Road Transport (Working Time) Regulations 2005 (“RT(WT)R”), namely, periods of waiting time the duration of which is known about in advance by the Mobile Worker. Such periods of time consist of time spent when the Mobile Worker is not required to remain at his/her workstation, but must be available to answer calls to start or resume driving or other work on request; and the period and the foreseeable duration is known in advance, either before departure or just before the start of the period of availability in question;

“Period of Extended Hire”

means any additional period that the Client wishes the Agency Worker to be supplied for beyond the duration of the original assignment or series of Assignments as an alternative to paying an Introduction Fee;

“Personal Data”

means any information relating to an identified or identifiable natural person (“Data Subject”); an identifiable natural person is one who can be identified, directly or indirectly in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

“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 Client to work temporarily for and under the supervision and direction of the relevant Client in the same role, and as further defined in Schedule 1 to these Terms;

“Relevant Period”

means the later of (a) the period of 8 weeks commencing on the day after the last day on which the Agency Worker worked for the Client having been supplied by the Employment Business; or (b) the period of 14 weeks commencing on the first day on which the Agency Worker worked for the Client having been supplied by the Employment Business or 14 weeks from the first day of the most recent Assignment where there has been a break of more than 6 weeks (42 days) since any previous assignment

“Relevant Terms and Conditions”

means terms and conditions relating to:

- (a) pay;
- (b) the duration of working time;
- (c) night work;
- (d) rest periods;
- (e) rest breaks; and
- (f) annual leave

that are ordinarily included in the contracts of employees or workers (as appropriate) of the Client whether by collective agreement or otherwise and including (for the avoidance



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| “Remuneration” | of doubt and without limitation) such terms and conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation; includes base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Agency Worker for services rendered to or on behalf of the Client or any third party will be added to the salary in order to calculate the Employment Business' fee; |
| “RT(WT)R” | means the Road Transport (Working Time) Regulations 2005; |
| “Temporary Work Agency” | means as defined in Schedule 1 of these Terms; |
| “Terms” | means these terms of business (including the attached schedules) together with any applicable Assignment Details Form; |
| “Transfer Fee” | means the fee payable in accordance with clause 9 below and Regulation 10 of the Conduct Regulations; |
| “Vulnerable Person” | means any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention, and includes any person under the age of eighteen; and |
| “Working Time” | means working time as defined as, and where applicable, by either the Working Time Regulations (Northern Ireland) 1998 as amended (“WTR”) and/or the RT(WT)R, namely, time consisting of those periods during which the Agency Worker is at his/her workstation at the disposal of the Client and exercising his/her functions or activities, and that such periods of time are devoted to road transport activities, such as driving, loading, and unloading, assisting passengers boarding the vehicle, cleaning and maintenance of the vehicle, and all other work intended to enhance the safety of the vehicle, cargo and passengers or to fulfil the legal or regulatory obligations directly linked to the specific transport operations; |
| “WTR” | means the Working Time Regulations (Northern Ireland) 1998. |

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

2. THE CONTRACT

- 2.1. These Terms constitute the contract between the Employment Business and the Client for the supply of the Agency Worker's services by the Employment Business to any Client and are deemed to be accepted by the Client by virtue of its request for, interview with or Engagement of the Agency Worker, or the passing of any information about the Agency Worker to any third party following an Introduction.
- 2.2. Subject to Clauses 2.3 and 3.3 these Terms contain the entire agreement between the parties and unless otherwise agreed in writing by the Director/Proprietor of the Employment Business these Terms of Business prevail over any terms of business or purchase conditions put forward by the Client.
- 2.3. No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Employment Business and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply, save as may be set out in writing by the Employment Business as may be reasonably required to implement any minor technical adjustments and improvements, or to reflect changes in applicable legislation or regulation, such variation or alteration shall take effect following the Employment Business providing not less than 14 days written notice.
- 2.4. The Employment Business shall act as an Employment Business (as defined in the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981) when Introducing Agency Workers for Assignments with the Client.

3. CHARGES

- 3.1. The Client agrees to pay the Charges as notified to and agreed with the Client. The Charges are calculated according to the number of hours worked by the Agency Worker (to the nearest quarter hour) and comprise but are not limited to the following:
 - 3.1.1. the Agency Worker's hourly rate of pay;
 - 3.1.2. an amount equal to any paid holiday leave to which the Agency Worker is entitled under the WTR and, where applicable, the AWR and which is accrued during the course of an Assignment;
 - 3.1.3. any other amounts to which the Agency Worker is entitled under the AWR where applicable;
 - 3.1.4. employer's National Insurance contributions;
 - 3.1.5. any travel, hotel or other expenses as may have been agreed with the Client or, if there is no such agreement, such expenses as are reasonable;
 - 3.1.6. the Employment Business' commission, which is calculated as a percentage of the Agency Worker's hourly rate; and
 - 3.1.7. the minimum period of hire is 8 hours per day.
- 3.2. The Client agrees to pay the Employment Business' charges in respect of the number of hours worked by the Agency Worker. For the avoidance of doubt, the number of hours worked by the Agency Worker during the week comprises of the total number of hours Working Time and where applicable the total number of hours spent as Periods of Availability as defined under the RT(WT)R.
- 3.3. The Employment Business reserves the right to vary the Charges agreed with the Client, by giving written notice to the Client:



- 3.3.1 in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the AWR (if relevant), the Pensions Act 2008 and the WTR; and/or
- 3.3.2 if there is any variation in the Relevant Terms and Conditions
- 3.4. The charges are invoiced to the Client on a weekly basis and are payable within 14 days of the date of the invoice.
- 3.5. In addition to the Charges, the Client will pay the Employment Business an amount equal to any bonus that the Client awards to the Agency Worker in accordance with clause 4.5 immediately following any such award and the Employment Business will pay any such bonus to the Agency Worker. For the avoidance of doubt, the Client will also pay any employer's National Insurance Contributions and the Employment Business' commission on the bonus (calculated using the same percentage rate as that used under clause 3.1.6) in addition to any bonus payable to the Agency Worker.
- 3.6. VAT is payable at the applicable rate on the entirety of the Charges and all sums payable under clause 3.4.
- 3.7. The Employment Business assumes responsibility for keeping and maintaining records of the Agency Worker's Working Time and night work under the RT(WT)R.
- 3.8. There are no rebates payable in respect of the charges of the Employment Business.
- 3.9. The Client's obligations under this clause 3 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.

The Employment Business reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment

4. CLIENT OBLIGATIONS

- 4.1. To enable the Employment Business to comply with its obligations under the Conduct Regulations the Client undertakes to provide to the Employment Business details of the position which the Client seeks to fill, including the following:
 - 4.1.1. the type of work that the Agency Worker would be required to do;
 - 4.1.2. the location and hours of work;
 - 4.1.3. the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Agency Worker to possess in order to work in the position;
 - 4.1.4. any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
 - 4.1.5. the date the Client requires the Agency Worker to commence the Assignment; and
 - 4.1.6. the duration or likely duration of the Assignment.
- 4.2. The Client will assist the Employment Business in complying with the Employment Business' duties under the WTR by supplying any relevant information about the Assignment requested by the Employment Business and the Client will not do anything to cause the Employment Business to be in breach of its obligations under the WTR. If the Client requires the services of a Agency Worker for more than 48 hours in any week during the course of an Assignment, the Client must notify the Employment Business of this requirement before the commencement of the Assignment or at the very latest, where this is not reasonably practicable, before the commencement of the week in which the Client requires the Agency Worker to work in excess of 48 hours.
- 4.3. The Client will comply with its obligations under Regulation 12 (Rights of agency workers in relation to access to collective facilities and amenities) and 13 (Rights of agency workers in relation to access to employment) of the AWR.
- 4.4. To enable the Employment Business to comply with its obligations under the AWR, the Client undertakes, if requested, as soon as possible prior to the commencement of each Assignment and during each Assignment (as appropriate) and at any time at the Employment Business' request:
 - 4.4.1. to inform the Employment Business of any Calendar Weeks in which the relevant Agency Worker has worked in the same or a similar role with the Client via any third party prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment which count or may count towards the Qualifying Period;
 - 4.4.2. if the Agency Worker has worked in the same or a similar role with the Client via any third party prior to the date of commencement of the relevant Assignment and/or works in the same or a similar role with the Client via any third party during the relevant Assignment, to 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;
 - 4.4.3. to inform the Employment Business if the Agency Worker has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment carried out work which could be deemed to count toward the Qualifying Period for the relevant Assignment in accordance with Regulation 9 of the AWR because s/he has:
 - 4.4.3.1. completed two or more assignments with the Client;
 - 4.4.3.2. completed at least one assignment with the Client and one or more earlier assignments with any member of the Client's Group; and/or
 - 4.4.3.3. worked in more than two roles during an assignment with the Client and on at least two occasions worked in a role that was not the same role as the previous role;
 - 4.4.4. save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to:
 - 4.4.4.1. provide the Employment Business with written details of the basic working and employment conditions the Agency Worker would be entitled to for doing the same job if the Agency Worker had been recruited directly by the Client as an employee or worker at the time the Qualifying Period commenced or with those of a Comparable Employee,

- such basic working and employment conditions being the Relevant Terms and Conditions;
- 4.4.4.2. inform the Employment Business in writing whether the Relevant Terms and Conditions provided are those of a hypothetical directly recruited employee or worker or those of a Comparable Employee;
- 4.4.4.3. if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide the Employment Business with a written explanation of the basis on which the Client considers that the relevant individual is a Comparable Employee; and
- 4.4.4.4. inform the Employment Business in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced; and
- 4.4.5. save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to provide the Employment Business with written details of its pay and benefits structures and appraisal processes and any variations of the same.
- 4.5. In addition, for the purpose of awarding any bonus to which the Agency Worker may be entitled under the AWR, the Client will:
 - 4.5.1. integrate the Agency Worker into its relevant performance appraisal system;
 - 4.5.2. assess the Agency Worker's performance;
 - 4.5.3. provide the Employment Business with copies of all documentation relating to any appraisal of the Agency Worker, including without limitation written details of the outcome of any appraisal and the amount of any bonus awarded; and
 - 4.5.4. provide the Employment Business with all other assistance the Employment Business may request in connection with the assessment of the Agency Worker's performance for the purpose of awarding any bonus.
- 4.6. The Client will comply with all the Employment Business' requests for information and any other requirements to enable the Employment Business to comply with the AWR.
- 4.7. The Client warrants that:
 - 4.7.1. all information and documentation supplied to the Employment Business in accordance with clauses 4.4, 4.5 and 4.6 is complete, accurate and up-to-date; and
 - 4.7.2. it will, during the term of the relevant Assignment, immediately inform the Employment Business in writing of any subsequent change in any information or documentation provided in accordance with clauses 4.4, 4.5 and 4.6;
- 4.8. Without prejudice to clauses 10.7 and 10.8, the Client shall inform the Employment Business in writing of any:
 - 4.8.1. oral or written complaint the Agency Worker makes to the Client which is or may be a complaint connected with rights under the AWR; and
 - 4.8.2. written request for information relating to the Relevant Terms and Conditions that the Client receives from the Agency Worker

as soon as possible but no later than 7 calendar days from the day on which any such oral complaint is made to or written complaint or request is received by the Client and the Client will take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business, in order to resolve any such complaint or to provide any such information in a written statement to the Agency Worker within 28 days of the Client's receipt of such a request in accordance with Regulation 16 of the AWR and the Client will provide the Employment Business with a copy of any such written statement.
- 4.9. The Client undertakes that it knows of no reason why it would be detrimental to the interests of the Agency Worker for the Agency Worker to fill the Assignment.
- 4.10. The Client agrees that the Employment Business can advertise for - and recruit – Agency Workers to supply to the Client, should you wish for us not to do this please confirm this in writing.

5. INFORMATION TO BE PROVIDED BY THE EMPLOYMENT BUSINESS TO THE CLIENT

- 5.1. When Introducing an Agency Worker to the Client the Employment Business shall inform the Client:
 - 5.1.1. of the identity of the Worker;
 - 5.1.2. that the Agency Worker has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment;
 - 5.1.3. that the Agency Worker is willing to work in the Assignment; and
 - 5.1.4. the Charges.
- 5.2. 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 Agency Worker is being Introduced for an Assignment in the same position as one in which the Agency Worker had previously been supplied within the previous five business days and such information has already been given to the Client, unless the Client requests that the information be resubmitted.
- 5.3. The Employment Business assumes responsibility for keeping and maintaining records of the Agency Worker's Working Time and Night Work under the RT(WT)R.

6. TIME SHEETS

- 6.1. At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of less than one week) the Client shall approve sign the Employment Business' time sheet verifying the number of hours worked by the Agency Worker during that week.
- 6.1. Approval Signature of the time sheet by the Client is confirmation of the number of hours worked.
- 6.2. If the Client is unable to approve sign a time sheet produced for authentication by the Agency Worker because the Client disputes the hours claimed, the Client shall inform the Employment Business as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what hours, if any, were worked by the Agency Worker.



Failure by the Employment Business to supply a signed time sheet does not absolve the Client of its obligation to pay the charges in respect of the hours worked.

- 6.3. The Client shall not be entitled to decline to sign reject a timesheet on the basis that it is dissatisfied with the work performed by the Agency Worker. In cases of unsuitable work the Client should apply the provisions of clause 12.1 below.

7. TIMESHEET SOFTWARE

- 7.1. The Employment Business may (but is not obliged to) as part of the Engagement procure the making available by [Driver Hire Group Services LTD] ("Software Provider") of the online timesheet software application ("Software") for the purpose of facilitating the Client's submission of time sheets pursuant to clause 6.
- 7.2. If the Software is made available to the Client pursuant to this clause 7, the Software Terms of Use set out in Schedule 2 ("Software Terms of Use") shall apply in respect of the Client's use of the Software, and the Client undertakes to the Employment Business and the Software Provider that it shall ensure that it and its employees, officers, consultants, agents and other authorised users' comply at all times with the Software Terms of Use.
- 7.3. The Client's obligations under this Agreement (including under clause 6) shall not be excused or affected by any downtime or unavailability of the Software.

8. PAYMENT OF THE AGENCY WORKER

The Employment Business assumes responsibility for paying the Agency Worker and where appropriate, for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Agency Worker pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003.

9. TRANSFER & INTRODUCTION FEES

- 9.1. The Client shall be liable to pay a Transfer Fee if the Client Engages an Agency Worker Introduced by the Employment Business other than via the Employment Business or introduces the Agency Worker to a third party and such introduction results in an Engagement of the Agency Worker by the third party other than via the Employment Business and:
- 9.1.1. where the Agency Worker has been supplied by the Employment Business, such Engagement takes place during the Assignment or within the Relevant Period; or
- 9.1.2. where the Agency Worker has not been supplied, such Engagement takes place within 6 months from the date of the Introduction to the Client.

The Transfer Fee will be calculated as follows:

15% of the Remuneration payable to the Agency Worker during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the Charges multiplied by 250.

- 9.2. If the Client wishes to Engage the Agency Worker other than via the Employment Business without liability to pay a Transfer Fee, the Client may, on giving 7 days written notice to the Employment Business, engage the Agency Worker for the Period of Extended Hire of 13 Weeks.
- 9.3. During such Period of Extended Hire the Employment Business shall supply the Agency Worker on the same terms on which s/he has or would have been supplied during the Assignment and in any case on terms no less favourable than those terms which applied immediately before the Employment Business received the notice in clause 9.2; and the Client shall continue to pay the Charges set out in clause 3. If the Employment Business is unable to supply the Agency Worker for any reason outside its control for the whole or any part of the Period of Extended Hire; or the Client does not wish to hire the Agency Worker on the same terms as the Assignment; but the Agency Worker is Engaged by the Client, the Client shall pay the Transfer Fee, reduced pro-rata to reflect any Charges paid by the Client during any part of the Period of Extended Hire worked by the Agency Worker before being Engaged by the Client. If the Client fails to give notice of its intention to Engage the Agency Worker other than via the Employment Business before such Engagement commences, the parties agree that the Transfer Fee shall be due in full.
- 9.4. Where prior to the commencement of the Client's Engagement other than via the Employment Business the Employment Business and the Client agree that such Engagement will be on the basis of a fixed term of less than 12 months, the Employment Business may, in its absolute discretion, reduce the Transfer Fee pro-rata. Such reduction is subject to the Client Engaging the Agency Worker for the agreed fixed term. Should the Client extend the Agency Worker's Engagement or re-Engage the Agency Worker within 12 months from the commencement of the initial Engagement the Employment Business reserves the right to recover the balance of the Transfer Fee.
- 9.5. The Employment Business will not refund the Transfer Fee in the event that the Engagement of the Agency Worker other than via the Employment Business by the Client or by a third party to which the Client introduces the Agency Worker terminates or terminates before the end of the fixed term referred to in clause 9.4.
- 9.6. VAT is payable in addition to any Transfer Fee due.

10. LIABILITY

- 10.1. Whilst reasonable effort is made by the Employment Business to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from Agency Workers and further to provide them in accordance with the Client's booking detail, no liability will be accepted by the Employment Business for any loss, expense, damage or delay arising from any failure to provide any particular Agency Worker for all or part of the period of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Agency Worker or if the Agency Worker terminates the Assignment for any reason. For the avoidance of doubt, the Employment Business does not exclude liability for death or personal injury arising from its own negligence.
- 10.2. Agency Workers supplied by the Employment Business are not Employees of the Employment Business and are deemed to be under the supervision, direction and control of the Client from the time they report to take up duties and for the duration of the Assignment. The Client agrees to be responsible for all acts, errors or omissions of the Agency Worker, whether wilful, negligent or otherwise as though the Agency Worker was on the payroll of the Client. The Client will also comply in all respects with all statutes including, for the avoidance of doubt, the WTR, RT(WT)R, Health and Safety At Work (Northern Ireland) Order 1978, the Management of Health and Safety at

Work (Northern Ireland) Regulations 2000, by-laws, codes of practice and legal requirements to which the Client is ordinarily subject in respect of the Client's own staff (excluding the matters specifically mentioned in Clause 8 above), including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Agency Worker during all Assignments.

- 10.3. The Client shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Agency Worker and about any requirements imposed by law by any professional body, which must be satisfied if the Agency Worker is to fill the Assignment. For Agency Workers who are mobile workers working in operations subject to EU Drivers Hours Rules, the Client will assist the Employment Business in complying with the Employment Business's duties under EU Drivers Hours Rules and the RT(WT)R by supplying relevant information about the Assignment requested by the Employment Business including copies of tachograph charts for Agency Workers. Furthermore the Client agrees not to do anything to cause the Employment Business to be in breach of its obligations under the EU Drivers Hours Rules and the RT(WT)R.
- 10.4. For Agency Workers who are Mobile Workers working in operations not subject to EU Drivers Hours Rules and Agency Workers who are not Mobile Workers, the Client will assist the Employment Business in complying with the Employment Business' duties under the WTR (as amended) by supplying any relevant information about the Assignment requested by the Employment Business and the Client will not do anything to cause the Employment Business to be in breach of its obligations under the WTR. Where the Client requires or may require the services of a Agency Worker for more than 48 hours in any week, the Client must notify the Employment Business of this requirement before the commencement of that week.
- 10.5. The Client undertakes that transport or fleet time schedules shall respect the requirements of EU Drivers Hours Rules and the RT(WT)R
- 10.6. The Client shall indemnify and keep indemnified the Employment Business against any costs, claims or liabilities incurred by the Employment Business arising out of any Assignment or arising out of any non-compliance with clauses 10.2 and 10.3 and/or as a result of any breach of these Terms by the Client.
- 10.7. The Client shall inform the Employment Business in writing of any AWR Claim which comes to the notice of the Client as soon possible but no later than 7 calendar days from the day on which any such AWR Claim comes to the notice of the Client.
- 10.8. If the Agency Worker brings, or threatens to bring, any AWR Claim, the Client undertakes to take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business and at the Client's own cost, to avoid, dispute, resist, mitigate, compromise or defend any such AWR Claim and to appeal against any judgment given in respect thereof.
- 10.9. The Client undertakes not to request the supply of an Agency Worker to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by a worker who has been transferred by the Client to perform the duties of a person on strike or taking official industrial action.

11. SUITABILITY CHECKS AND INFORMATION TO BE PROVIDED IN SPECIAL SITUATIONS

- 11.1. Where:
 - 11.1.1. the Agency Worker is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment, the Employment Business will take all reasonably practicable steps to obtain and offer to provide to the Client copies of any relevant qualifications or authorisations of the Agency Worker; and
 - 11.1.2. in addition, where the Assignment involves working with, caring for or attending one or more Vulnerable Persons, the Employment Business will take all reasonably practicable steps to obtain and offer to provide copies to the Client of two references from persons who are not relatives of the Agency Worker and who have agreed that the references they provide may be disclosed to the Client;and such other reasonably practicable steps as are required to confirm that the Agency Worker is suitable for the Assignment. If the Employment Business has taken all reasonably practicable steps to obtain the information above and has been unable to do so fully it shall inform the Client of the steps it has taken to obtain this information in any event.
- 11.2. The Client shall advise the Employment Business at the time of instructing the Employment Business to supply an Agency Worker whether during the course of the Assignment, the Agency Worker will be required to work with, care for or attend one or more Vulnerable Persons or engage in activity or otherwise be working in a position covered by the Safeguarding Vulnerable Groups Order (Northern Ireland) 2007 as applicable.
- 11.3. The Client shall assist the Employment Business by providing any information required to allow the Employment Business to comply with its statutory obligations under the Safeguarding Vulnerable Groups Order (Northern Ireland) 2007 as applicable and to allow the Employment Business to select a suitable Agency Worker for the Assignment.
- 11.4. In particular in the event that the Client removes an Agency Worker from an Assignment in circumstances which would require the Employment Business to provide information to the Independent Safeguarding Authority (or the equivalent authority) under the Safeguarding Vulnerable Groups Order (Northern Ireland) 2007, the Client will provide sufficient information to the Employment Business to allow it to discharge its statutory obligations.

12. UNSUITABILITY OF THE AGENCY WORKER AND TERMINATION

- 12.1. The Client undertakes to supervise the Agency Worker sufficiently to ensure the Client's satisfaction with the Agency Worker's standards of workmanship. If the Client reasonably considers that the services of the Agency Worker are unsatisfactory, the Client may terminate the Assignment either by instructing the Agency Worker to leave the Assignment immediately, or by directing the Employment Business to remove the Agency Worker. In such circumstances the Client will provide, if requested, any information relating to poor performance, misconduct, or the reason for terminating the Assignment including but not limited to copies of policies, procedures, internal and external correspondence relating to the alleged misconduct/ poor performance or reason for termination. The Employment Business may, in such circumstances, reduce or cancel the charges for the time worked by that Agency Worker, provided that the Assignment terminates:

- 12.1.1. within four hours of the Agency Worker commencing the Assignment where the booking is for more than seven hours; or
 - 12.1.2. within two hours for bookings of seven hours or less;
- and also provided that notification of the unsuitability of the Agency Worker is confirmed in writing to the Employment Business within 48 hours of the termination the Assignment.
- 12.2. Any of the Client, Employment Business or the Agency Worker may terminate an Assignment at any time without prior notice and without liability.
 - 12.3. The Client shall notify the Employment Business immediately and without delay and in any event within 24 hours if the Agency Worker fails to attend work or notifies the Client that the Agency Worker is unable to attend work for any reason.
 - 12.4. The Employment Business shall notify the Client immediately if it receives or otherwise obtains information, which gives it reasonable grounds to believe that a Agency Worker supplied to the Client is unsuitable for the Assignment, and shall terminate the Assignment under the provisions of clause 12.2.

13. VEHICLES

For the purposes of this clause 13, the following additional terms relate to the supply of Agency Workers as drivers (referred to as "Temporary Drivers").

- 13.1. Temporary Drivers are supplied by the Employment Business on the strict understanding that the Client holds an operator's licence under the Goods Vehicle (Licensing of Operators) Act 1995 when required.
- 13.2. For the avoidance of doubt, upon the Employment Business providing the Client with an Agency Worker, that Agency Worker shall become the servant of the Client and shall be deemed to be using the Client's vehicles pursuant to the Client's operator's licence.
- 13.3. As far as is possible, the Employment Business will check references of Temporary Drivers and will examine driving licences and permits; notwithstanding this, the Client agrees to take direct responsibility for all statutory duties where applicable for checking and monitoring driving licences and permits, Temporary Drivers' hours records, the issue and collection of tachograph charts, maintenance and safety of vehicles, Health and Safety Regulations, and Road Traffic and liability insurances, including but not limited to fully comprehensive insurance for the vehicle to be driven and its contents.
- 13.4. The Client shall on request permit the Employment Business to inspect and take copies of its operator's licence (when required), policies of insurance for the vehicles to be driven by the Temporary Driver, and time records created and maintained by or for the Client relating to any driver supplied to the Client by the Employment Business.
- 13.5. To assist Clients the Employment Business agrees to provide the Client upon request with such information as is available to the Employment Business about any driving assignments carried out by the Temporary Driver in the seven days immediately preceding the commencement of an Assignment with the Client, provided the Temporary Driver shall have worked for a Client of the Employment Business during those seven days.

14. CONFIDENTIALITY AND DATA PROTECTION

- 14.1. All information (other than publicly available via independent means or which must be disclosed by law) relating to an Agency Worker is confidential and is provided solely of proposed Assignments, Assignments and Engagements, such information must not be used for any other purpose or divulged to any third party by the Client, without the express written permission of the Employment Business and/or Agency Worker as may be required. Both parties will comply with all applicable requirements of the Data Protection Legislation. This section is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. **Data Controller, Data Processor and Special Category Data** have the meanings as defined in the GDPR.
- 14.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Employment Business is collecting Personal Data for use in providing the services and Agency Workers as such the Employment Business act as Data Controller, The Client may also share some Personal Data about Agency Workers with the Employment Business in relation to an AWR Assignment or Agency Worker so the Employment Business can provide, monitor and develop services and engage with Agency Workers; further details are:
 - 14.2.1. the scope of processing by the Employment Business of Personal Data is limited to processing in the UK, by the Employment Business and its third party service providers, to facilitate the provision, monitoring and development of the services, for provision of Agency Workers and for ensuring compliance with the Terms;
 - 14.2.2. the nature and purpose of processing of Personal Data by Employment Business is the facilitation of the services of the Employment Business;
 - 14.2.3. the duration of the processing is limited to the duration of the provision of the services, supply of Agency Workers and any Engagement under these Terms and any further period as may be necessary to fulfil legal obligations (for example records of Agency Worker engagement and for VAT and accounting purposes and to protect against fraud); and
 - 14.2.4. the types of Personal Data processed include Personal Data records relating to the Agency Workers, for example CVs and employment history. Personal Data processed may also include Special Category Data relating to Agency Worker health data and trade union membership. Processing of which is limited to that which is necessary to carry out the obligations and to exercise specific rights of the Data Controller or of the Data Subject in the field of employment law or collective agreements or for the assessment of the working capacity of the Agency Worker. Either as permitted by law or with freely given fully informed consent of the Data Subject we may also share driving history and driving conviction information, taking due account of rehabilitation of offenders legislation.
- 14.3. Each party will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data for the duration and purposes of the arrangement under these Terms.
- 14.4. Each party shall, in relation to any Personal Data processed in connection with the performance by Employment Business of its obligations or exercise of rights under these Terms relating to provision of services:

- 14.4.1. process that Personal Data only on written instructions of the Data Controller unless required to do so in accordance with meeting its legal obligations or as otherwise legally entitled.
- 14.4.2. ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- 14.4.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 14.4.4. not transfer any Personal Data outside of the UK or wider European Economic Area unless the Data Controller's prior written consent has been obtained and the following conditions are fulfilled:
 - 14.4.4.1. with respect to the processing of the Personal Data;
 - 14.4.4.2. the Client or Employment Business have provided appropriate safeguards in relation to the transfer;
 - 14.4.4.3. the Data Subject has enforceable rights and effective legal remedies as may be required to be made available by law from time to time; and
 - 14.4.4.4. the parties comply with their obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
- 14.4.5. the Client will comply with reasonable instructions notified to it in advance by the Employment Businesses written direction and as directed, delete or return Personal Data and copies thereof to the Employment Business on termination of arrangements between the parties unless required by law or otherwise entitled to maintain a record the Personal Data;
- 14.4.6. maintain complete and accurate records and information to demonstrate its compliance with this section 14.
- 14.5. The Employment Business and the Client will assist each other (at their own cost), in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 14.6. Where a party is the Data Processor in respect of relevant Personal Data notify the Data Controller without undue delay and in any event within 72 hours on becoming aware of a Personal Data breach;
- 14.7. The Employment Business confirms that it has entered or (as the case may be) will enter with any third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this section 14. As between the Client and the Employment Business, the Employment Business shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this section, but always subject to these Terms and any limitations of liability or obligation contained in them.
- 14.8. The Employment Business may, at any time on not less than 30 days' notice, revise this section by replacing it with any applicable controller to processor standard sections or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
- 14.9. The Employment Business undertakes to keep confidential all Relevant Terms and Conditions (other than publicly available via independent means or which must be disclosed by law) that the Client discloses to the Employment Business and not to use such information except for the purposes of compliance with the AWR (including for the avoidance of doubt and without limitation, when dealing with any request for information or complaint made by an Agency Worker or in relation to any AWR Claim).
- 14.10. Information relating to the Employment Business' business which is capable of being confidential must be kept confidential and not divulged to any third party, except to the extent such information is already independently in the public domain or which must be disclosed by law).

15. NOTICES

- 15.1. All notices which are required to be given in accordance with these Terms 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.

16. SEVERABILITY

- 16.1. If any of the provisions of these Terms 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.

17. RIGHTS OF THIRD PARTIES

- 17.1. Subject to clause 17.2, these Terms does not give rise to any rights under the Contracts (Rights of Third parties) Act 1999 to enforce any term of these Terms.
- 17.2. If the Client makes use of the Software (as defined in clause 7), the Software Provider (as defined in clause 7) shall be entitled to take the benefit of and enforce the provisions of clause 7 and Schedule 2 against the Client.

18. LAW

- 18.1. These Terms are governed by the law of the country and the exclusive jurisdiction of the Courts of the country in which the Employment Business has its operational address.



I confirm having read the contents of the attached Terms & Conditions and accept the same

Date: _____ Time: _____ Signature: _____

Fax Received on (Fax No.): _____ Print Name: _____

Company Name _____ Position in Company _____

SCHEDULE 1: "COMPARABLE EMPLOYEE", "QUALIFYING PERIOD" and "TEMPORARY WORK AGENCY"

"Comparable Employee" means as defined in Regulation 5(4) of the Agency Workers Regulations 2010 being an employee of the Client who:

- (a) works for and under the supervision of the Client and is engaged in the same or broadly similar work as the Agency Worker having regard, where relevant, to whether the employee and the Agency Worker have a similar level of qualification and skill; and
- (b) works or is based at the same establishment as the Agency Worker or, where there is no comparable employee working or based at that establishment who satisfies the requirements of (a) above, works or is based at a different establishment and satisfies those requirements.

For the purpose of the definition of "Qualifying Period" in clause 1.1 of these Terms, when calculating whether any weeks completed with the Client count as continuous towards the Qualifying Period, where:

- (a) the Agency Worker has started working during an assignment and there is a break, either between assignments or during an assignment, when the Agency Worker is not working;
- (b) the break is:
 - (i) for any reason and not more than six Calendar Weeks;
 - (ii) wholly due to the fact that the Agency Worker is incapable of working in consequence of sickness or injury and the break is 28 Calendar Weeks or less; paragraph (iii) does not apply; and, if required to do so by the Employment Business, the Agency Worker has provided such written medical evidence as may reasonably be required;
 - (iii) related to pregnancy, childbirth or maternity and is at a time in a protected period, being a period beginning at the start of the pregnancy and ending at the end of the 26 weeks beginning with childbirth (being the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy) or, if earlier, when the Agency Worker returns to work;
 - (iv) wholly for the purpose of taking time off or leave, whether statutory or contractual, to which the Agency Worker is otherwise entitled which is:
 - i. ordinary, compulsory or additional maternity leave;
 - ii. ordinary or additional adoption leave;
 - iii. ordinary or additional paternity leave;
 - iv. time off or other leave not listed in paragraphs (iv)i, ii, or iii above; or
 - v. for more than one of the reasons listed in paragraphs (iv)i, ii, iii to iv above;
 - (v) wholly due to the fact that the Agency Worker is required to attend at any place in pursuance to being summoned for service as a juror and the break is 28 Calendar Weeks or less;
 - (vi) wholly due to a temporary cessation in the Client'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 Client;
 - (vii) wholly due to a strike, lock-out or other industrial action at the Client's establishment; or
 - (viii) wholly due to more than one of the reasons listed in paragraphs (ii), (iii), (iv), (v), (vi) or (vii); and
- (c) the Agency Worker returns to work in the same role with the Client, any weeks during which the Agency Worker worked for the Client 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 Client 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 Client for the original intended duration or likely duration of the relevant Assignment, whichever is the longer. For the avoidance of doubt, time spent by the Agency Worker working during an assignment before 1 October 2011 does not count for the purposes of the definition of "Qualifying Period".

"Temporary Work Agency" means as defined in Regulation 4 of the 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 Clients; 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 Clients.

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 Clients. For the purpose of this definition, a "Client" 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.



SCHEDULE 2: SOFTWARE TERMS OF USE

1. Definitions

In these Terms:

1.1 the following expressions shall have the following meanings unless the context otherwise requires:

"Account": the account allocated to you for you to access the Software;

"Authorised User": the users of the Software.

"Content": any information that you upload to or using the Software;

"Intellectual Property Rights": all intellectual and industrial property rights of any nature anywhere in the world, including copyright, database rights, design rights, topography rights, registered designs, design rights, trade mark rights, service mark rights, domain name rights, patents, rights to inventions, trade secrets, rights in know-how, and any other rights of a similar nature, whether or not any of the same are capable of protection by registration and whether registered or not, and applications for registration of any of the foregoing and the right to apply for any of them, anywhere in the world;

"Virus": any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or device;

"Vulnerability": a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability.

"we", "us" or "our": the Software Provider.

"you" or "your": the Client and/or the Authorised Users, as applicable.

1.2 Any phrase introduced by the terms **"including"**, **"include"**, **"in particular"** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding or following those terms.

2. These Terms and the Software

2.1 These Terms apply to your use of the Software to the exclusion of all other terms. By accessing the Software you agree to these Terms. If you do not agree to these Terms you must not attempt to access the Software by any other means.

2.2 We reserve the right and have absolute discretion, but not an obligation, to remove, screen or edit any Content that you provide in breach of these Terms or is otherwise objectionable.

2.3 You acknowledge that we cannot guarantee and do not warrant uninterrupted, timely or error-free access to the Software. We are not responsible for any delays, delivery failures, or any other loss or damage resulting from or relating to your network connections or telecommunications links, or caused by lack of internet connectivity or failure on the part of a cloud hosting provider.

2.4 We do not warrant that the Software will meet your needs.

2.5 We retain the right to, if we consider it appropriate, remove any Content; prevent or restrict access to the Software; temporarily suspend your Account and/or close your Account; and/or take any other action to preserve and protect the Software and/or to restrict access to or availability of or remove any objectionable material, feedback, ratings, inaccurate listings, inappropriately categorised items, unlawful items or items prohibited for listing under these Terms.

3. Your Account

3.1 You must keep your Account password confidential and immediately inform us if any unauthorised third party becomes aware of that password or if there is any unauthorised use of the Account or any breach of security known to you. You agree that any person to whom your username or password is disclosed is authorised to act as your agent for the purposes of using (and/or transacting via) the Software. You are entirely responsible if you do not maintain the confidentiality of your password.

4. Your obligations

4.1 You shall comply with all Applicable laws, statutes, regulations and by-laws in relation to the exercise of your rights and performance of your obligations under these Terms.

4.2 You shall not, except as may be allowed by any applicable law which is incapable of exclusion and except to the extent expressly permitted under these Terms:



- 4.2.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software (as applicable) in any form or media or by any means; or
 - 4.2.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - 4.2.3 build a product or service which competes with the Software; or
 - 4.2.4 use the Software to provide services to third parties; or
 - 4.2.5 subject to paragraph 5.1.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software available to any third party; or
 - 4.2.6 attempt to obtain, or assist third parties in obtaining, access to the Software; or
 - 4.2.7 introduce or permit the introduction of, any Virus or Vulnerability into the Software or any network and information systems belonging to us or a third party supplier of ours who assists in making the Software available to you.
- 4.3 You shall not in any way use the Software, or submit to us or the Software, anything which in any respect:
- 4.3.1 is fraudulent, criminal or unlawful;
 - 4.3.2 is inaccurate or out-of-date;
 - 4.3.3 is obscene, indecent, vulgar, discriminatory, offensive, threatening, defamatory or untrue;
 - 4.3.4 impersonates any other person or body or misrepresents a relationship with any person or body;
 - 4.3.5 infringe or breach the Intellectual Property Rights or privacy or other rights of us or any third party;
 - 4.3.6 be contrary to our interests;
 - 4.3.7 is contrary to any specific rule or requirement that we may stipulate for the Software; or
 - 4.3.8 involves your use, delivery or transmission of any Virus or Vulnerability.
- 4.4 It is your responsibility to ensure that the Software is sufficient and suitable for your purposes and meets your requirements. You bear sole responsibility and liability for the consequences of your use of the Software.
- 5. Intellectual Property Rights**
- 5.1 We and you acknowledge that, as between us and you, we and our licensors own all Intellectual Property Rights in the Account and the Software. We grant to you a limited non-transferable licence to make use of the Account and the Software in accordance with these Terms. This licence expressly excludes, without limitation:
- 5.1.1 any resale or commercial use of the Software; and
 - 5.1.2 modifying, distributing, copying, republishing or making any derivative of the Software.
- 5.2 Save as expressly set out in these Terms, you shall have no rights to use our (or our licensors') Intellectual Property Rights in the Software for any other purpose without our express prior written consent.