

GENERAL CONTRACT TERMS FOR CLIENTS

VERSION: MAY 2021

1. Interpretation

- 1.1 Definitions are set out in the 'Main Terms' section of the Contract Details and in Schedule 1 to these General Terms.
- 1.2 These terms apply (and shall be deemed to be accepted by the Client) as from the earlier of the date on which HN first Introduces the services of a Contractor or Consultant to the Client or the Client first issuing an assignment specification to HN, and shall apply thereafter in relation to each subsequent Introduction and/or issued assignment specification and to each Contract Details agreed between the parties hereunder (irrelevant of the contract number assigned to such document). In the event of any conflict or inconsistency between the Contract Details and the terms in these General Contract Terms for Clients the terms of the relevant Contract Details shall take precedence.

2. Consultancy Services and HN's Duties

- 2.1 HN shall use reasonable endeavours to procure that (subject to Clauses 6 and 7) the Contractor shall at all times during the continuance of the appointment under this Agreement:
- (a) devote such time attention skill and ability to the performance of the Services to be provided pursuant to the terms of this Agreement as the Client shall require for the proper performance thereof;
 - (b) comply with such reasonable requirements as may be notified to the Contractor or HN by the Client;
 - (c) subject to the termination provisions set out in clause 7 below, provide the Services from (and including) the Start Date:
 - (i) until (and including) the End Date; or
 - (ii) until (and including) such date later than the End Date ("**the Extension Date**") as the parties may agree in writing;

insofar as such requirements are not inconsistent with the terms of this Agreement.

3. Client's Duties and Protection of HN's Business

- 3.1 The Client warrants and confirms that:
- (a) if HN issues, or caused to be issued, any advertisement in order to source potentially suitable service providers to provide the Services (or similar services), the Client has, prior to any such issue, given HN authority to source such service providers.
 - (b) it has given to HN sufficient information in order for HN properly to consider the suitability of the Contractor and the Consultant to perform the Services, including but not limited to:
 - (i) the identity of the Client and, if applicable, the nature of the Client's business;
 - (ii) the date on which the Client requires provision of the Services to commence and the duration or likely duration of provision of the Services;
 - (iii) details of the Services including, but not limited to, the type of work, the location at which and the hours during which the Services are to be provided, any risks to health

and safety known to the Client and the steps taken by the Client to prevent or control such risks;

- (iv) the experience, training, qualifications and any authorisation which the Client considers are necessary, or which are required by law or by any professional body for the Consultant to possess in order to provide the Services; and
 - (v) any expenses payable by or to the Contractor.
- (c) HN has supplied it with confirmation of the following:
- (i) the identity of the Contractor and the Consultant;
 - (ii) that the Consultant has the experience, training, qualifications and any authorisation which the Client considers are necessary, or which are required by law or by any professional body, to perform the Services; and
 - (iii) that the Contractor is willing to provide the Services.

3.2 To the extent that HN may not have supplied the Client with confirmation as set out in Clause 3.1(c), the Client confirms that it is satisfied with the confirmation supplied; and the Client agrees that if the Consultant fails to have the experience, training, qualifications or any authorisation which the Client considers are necessary, or which are required by law or by any professional body, HN shall have no liability to the Client in respect of this.

3.3 The Client:

- (a) acknowledges whilst every effort is made by HN to ensure a reasonable standard of skill, integrity and reliability from the Contractor and its Consultant and to provide the Contractor and its Consultant in accordance with the Client's requirements, the Client shall take appropriate steps to satisfy itself as to the suitability, competence, integrity and qualifications of the Contractor and its Consultant(s), including, but not limited to, checking the Contractor and its Consultant(s) identity and eligibility to work in the UK;
- (b) shall make clear to the Contractor and its Consultant(s) what duties are to be performed and what rules apply in respect of specific sites of the Client as are relevant to the performance of the Services;
- (c) shall ensure that all relevant health and safety legislation requirements are complied with in respect of performance of the Services by the Contractor (and/or the Consultant(s));
- (d) shall check and authorise timesheets evidencing performance of the Services by the Contractor/Consultant(s);
- (e) shall (without limitation to the above) ensure that no act or omission occurs which constitutes unlawful discrimination, bullying or harassment of any Contractor in connection with the performance of the Services;
- (f) shall advise HN of any risks to health and safety known to the Client and the steps taken by the Client to control such risks and about any requirements which the Client considers are necessary or which are imposed by law or by any professional body which must be satisfied if the Contractor and its Consultant are to perform the Services;
- (g) undertakes that it knows of no reason why it would be detrimental to the interests of the Contractor or its Consultant for the Contractor or the Consultant to perform the Services.
- (h) undertakes not to request the supply of a Contractor or its Consultant to perform the Services normally performed by a worker who is taking part in official industrial action or duties normally

performed by someone who has been transferred by the Client to perform the duties of the person on strike or taking official industrial action.

- (i) undertakes to inform HN immediately if the Services would require the Contractor and/or its Consultant to be involved in working or attending any person who is under the age of 18, or who, by reason of age, infirmity or any other circumstance, is in need of care or attention.
- (j) undertakes to provide HN, on a timely basis, with such information as HN shall reasonably request from the Client to enable HN to comply with or otherwise to evidence compliance with the AWR;
- (k) shall notify HN if the assignment is not suitable for pregnant workers. [If the Assignment is not suitable for such worker and HN so requires the Client will find the relevant pregnant worker **"suitable alternative work"** in accordance with the AWR and increase the Payment Rate to reflect any increased costs which result from the alternative work or where such suitable alternative work can not be found the Client will pay HN the Payment Rate until the relevant End Date. The Client will indemnify HN for any Losses arising from breach of this clause 3.3(k).

3.4. The Client agrees to the terms relating to Absence Entitlement set out in the Contract Details.

4. Transfer Provisions

4.1 **[Only applicable where the Conduct Regulations do not apply – see Clause 16]** If a Deemed Introduction occurs within the Restricted Period the Client shall pay to HN a Conversion Fee. For the purposes of this Clause 4:

- (a) a **"Deemed Introduction"** will occur where the Client, any Client Group Company, any client of the Client with whom the Contractor and/or the Consultant had material contact within the six months prior to any engagement of the Contractor and/or Consultant by such client (a **"Client Contact"**), or any third party (including any client of the Client) to whom the Client introduces the Contractor and/or the Consultant (a **"Client Third Party Contact"**), directly or indirectly (other than through HN):
 - (i) employs or otherwise engages the Contractor or the Consultant to carry out the Services or services similar or related to the Services; or
 - (ii) otherwise makes arrangements so that the Contractor or the Consultant provides services similar or identical or related to the Services for the Client, any Client Group Company, a Client Contact or a Client Third Party Contact;
- (b) **"Restricted Period"** means during the term of this Agreement and the period during and within 6 months from the expiry or termination of this Agreement,

4.2 The Conversion Fee shall be payable whether or not the provision of Services under this Agreement has commenced when the Deemed Introduction occurs, and no refund of the Conversion Fee shall be payable if such employment, engagement or arrangement terminates.

4.3 **[Only applicable where the Conduct Regulations do apply – see Clause 16]** If an Introduction occurs and the Contractor and/or the Consultant has not commenced provision of the Services through HN in accordance with the terms of this Agreement, the Client shall either:

- (a) elect, by not more than 2 Normal Working Days' notice in writing to HN, to engage HN to arrange for the Contractor and/or the Consultant to provide the Services, under and in accordance with the terms of this Agreement, for 26 weeks; or
- (b) pay to HN the Introduction Fee, and no refund of the Introduction Fee shall be payable if the Engagement terminates.

- 4.4 **[Only applicable where the Conduct Regulations do apply]** If an Engagement occurs within the Relevant Period, the Client shall either:
- (a) elect, by not more than 2 Normal Working Days' notice in writing to HN, to engage HN to arrange for the Contractor and/or the Consultant to provide the Services on terms similar to those contained in this Agreement and no less favourable to the Client than those which applied immediately before HN received such notice (unless agreed otherwise by the Client), for an extended period of hire being 26 weeks during which HN shall be entitled to the Payment Rates set out in the Contract Details for each hour/day the Contractor and/or Consultant performs the Services during such extended period of hire; or
 - (b) pay an Introduction Fee, and no refund of the Introduction Fee shall be payable if the Engagement terminates.
- 4.5 **Only applicable where the Conduct Regulations do apply]** If the Client has not served written notice of election on HN in accordance with the provisions of Clause 4.3 (a) or 4.4(a) (as appropriate) within 2 Normal Working Days of the Introduction or Engagement (as appropriate), the Introduction Fee shall immediately become due and payable by the Client.
- 4.6 **[Only applicable where the Conduct Regulations do apply]** If the Client introduces the Contractor and/or the Consultant to a third party and that third party employs or otherwise engages, directly or indirectly (other than through HN), the Contractor and/or the Consultant within the Relevant Period, the Client shall pay to HN the Introduction Fee and no refund of the Introduction Fee shall be Payable if any such employment or engagement terminates.
- 4.7 It is agreed between the parties that any candidate/individual Introduced by HN to the Client who is not initially successful but who is required by the Client to provide services to the Client within 6 months from the date of Introduction, will be engaged to perform services to the Client in accordance with the terms of this Agreement.

5. Payment of Fees

- 5.1 HN will be entitled to issue invoices in respect of the Services supplied during the relevant invoicing period (being calculated as a multiple of the number of hours/days (as appropriate) during which the Services have been provided and the relevant Payment Rate) plus VAT where appropriate. Invoices shall be payable by the Client within 14 days of the date of invoice.
- 5.2 For the avoidance of doubt in the calculation of the sums due to HN in relation to the Services performed by the Contractor a time sheet authorised by a representative of the Client shall be conclusive evidence that the Services have been provided to the satisfaction of the Client at the times and for the total period of time set out in such time sheet.
- 5.3 If the Client is unable to sign a time sheet because it disputes the hours claimed, the Client shall inform HN as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with HN to enable HN to establish the hours in which the Services were performed by the Contractor (if any). Failure by the Client to sign any time sheet does not absolve the Client from its obligation to pay HN for hours in which the Services were performed by the Contractor.
- 5.4 HN shall not be liable for fraudulent timesheets submitted by or on behalf of the Contractor and/or the Consultant.
- 5.5 The Client acknowledges and agrees it may not refuse to pay any invoice on the basis that the Services are unsatisfactory. The Client shall notify HN immediately if it is dissatisfied with the performance of the Services by the Contractor and/or the Consultant (in which case the provisions of Clause 6 shall apply).
- 5.6 Unless otherwise agreed by HN all payments due to it hereunder shall be paid by direct bank transfer.
- 5.7 Interest shall accrue and be payable by the Client on all overdue sums in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (or any amendment or re-enactment of this Act), from the due date until the date of actual payment, compounded monthly.

- 5.8 There are no refunds or rebates payable in respect of the Payment Rates, the Conversion Fee or the Introduction Fee.
- 5.9 The Payment Rates comprise mainly the Contractor's rate but also include HN's fees, calculated as a percentage of the Contractor's rate. HN reserves the right to increase the Payment Rates to take into account any statutory or other legal change, including, without limitation, under the AWR or the Pensions Act 2008, which leads to an increase in a Contractor's or Consultant's statutory and/or legal entitlements resulting in an increase in the cost of supply. HN shall give the Client notice of any such increase to Payment Rates.
- 5.10 HN shall be entitled to charge the Client for any period during which a pregnant Consultant is absent during Client Business Hours for the purposes of attending an ante-natal care appointment (in accordance with s.55 and s.56 of the Employment Rights Act 1996) and any such hours will be shown on the relevant time sheet.

6. Substitution and Replacements

- 6.1 HN shall be entitled to provide a suitably skilled, experienced and qualified replacement Contractor and/or Consultant to the Client (the "**Substitute**"). Any such Substitute provided shall become the Contractor or Consultant for the purposes of this Agreement (and all references herein to the "**Contractor**" or the "**Consultant**" shall apply to such Substitute).
- 6.2 If a Contractor or its Consultant(s) fails in the reasonable opinion of the Client to perform the Services satisfactorily, the Client shall notify HN in writing and HN shall use reasonable endeavours to procure that a suitable replacement Contractor and/or replacement Consultant(s) is/are available to perform the Services as soon as possible. If no such replacement is available within 5 Normal Working Days of receipt by HN of the Client's notice, then the Client may terminate this Agreement in accordance with Clause 7.1(b) below. The Client shall be under no obligation to accept any such replacement if such replacement is not suitable in the reasonable opinion of the Client.
- 6.3 For the avoidance of doubt, handover to any replacement Contractor and/or Consultant shall be at no additional cost to the Client.

7. Termination

- 7.1 This Agreement may be terminated prior to the End Date or (as the case may be) any Extension Date:
- (a) by either party in writing:
- (i) by notice with immediate effect if it is unable to commence continue or completely perform its obligations under this Agreement by reason of illness, injury, other incapacity, Event of Force Majeure (see clause 15.6 below) or any other cause (whether or not of a similar nature to the foregoing) affecting that party, or (in the case of HN) the Contractor or any Consultant(s), which is not within that party's reasonable control;
 - (ii) by notice with immediate effect if there is any serious and fundamental breach of this Agreement by the other incapable of remedy; or
 - (iii) by 7 days' notice if there is any other serious or repeated breach of this Agreement by the other capable of remedy in the reasonable opinion of the terminating party and which is not remedied within 7 days of such notice; or
 - (iv) by either party if the other becomes bankrupt or applies for or has made against it a receiving order or makes any composition with its creditors or an administration order or order is made, or resolution passed for its winding up or otherwise becomes unable to pay its debts.
- (b) by the Client by written notice with immediate effect in the circumstances set out in clause 6 above;

- (c) by either party by written notice in accordance with the Termination provision set out in the Contract Details.
 - (d) by HN with immediate effect (without liability for compensation or damages or otherwise) if it receives or otherwise obtains information which gives it reasonable grounds to believe that the Contractor and/or Consultant is unsuitable.
 - (e) by written notice with immediate effect by HN if the Client refuses to increase the Payment Rate to HN in order that the Payment Rate (less HN's margin) is higher than the Comparator's Pay pursuant to clause 12.1.
 - (f) by written notice with immediate effect by HN if the Client refuses to provide HN with any relevant Information (and/or gives HN incorrect Information).
- 7.2 Termination of this Agreement, howsoever caused, shall not release the Client from its obligation to pay to HN all fees due up to the date of termination.
- 7.3 Termination of this Agreement shall be without prejudice to the rights of either party arising prior to termination.
- 7.4 HN may, prior to the Start Date, give notice to the Client that it will no longer provide the Services of the Contractor. If that should happen, HN will give notice to the Client and this Agreement will automatically terminate on the date of that notice without either party being liable to the other.
- 7.5 Consequences of termination: The termination or expiry of this Agreement shall be without prejudice to the rights of either party occurring prior to or as a result of such termination. Clauses 3,4,5,8,9,10, 11,12,15 and 17 shall survive expiration or termination of this Agreement for whatever reason.
- 8. Acknowledgements and Indemnity**
- 8.1 Nothing contained in this Agreement shall in any way constitute:
- (a) the Contractor or the Consultant as the employee(s) or worker(s) of HN or the Client; or
 - (b) (where there is no supplier), the Consultant as the employee of HN or the employee of the Client.
- 8.2 HN has engaged the Contractor on a basis that requires it to co-operate with the Client's staff and liaise at all appropriate times with the individual(s) representing the Client to ensure the appropriate performance and delivery of the Services and use their own skills and initiative as to the technical manner in which the Services are delivered.
- 8.3 The Client is under no obligation to offer work to HN, the Contractor or the Consultant nor is HN the Contractor or the Consultant under any obligation to accept such work that may be offered, except as mutually agreed upon. No party wishes to create or imply any mutuality of obligation between themselves or between the Client and the Contractor (or the Consultant on behalf of the Contractor) in the course of, or in between any performance of Services or during any notice period. Subject to clause 7.3, the Client is not obliged to pay HN at any time when no work is available during this Agreement.
- 8.4 The Client acknowledges that:
- (a) neither the Contractor nor the Consultant(s) are supervised on a day to day basis by HN; and
 - (b) should it entrust the Contractor or the Consultant(s) with the handling of money, securities, valuables, negotiable documents or confidential information that shall be at the sole risk of the Client.
- 8.5 Where the Services are performed by a PSC Contractor, HN and the Client acknowledge that the PSC Contractor offers their services on an independent business to business basis and accordingly neither the Client nor HN supervises and/or has the right to control the actions of the PSC Contractor in the way that

it would if an employment or worker relationship existed. If the Client does, or intends to, supervise and direct any PSC Contractor, the Client shall immediately notify HN of that fact.

- 8.6 The Client acknowledges that HN shall not be responsible for supervising, managing or directing the Contractor(s) and the Consultant whilst working on an assignment and that accordingly, only the Client is in a position to assess and insure against risks in respect of or during or arising out of the period for which the Contractor and/or the Consultant is performing the Services. However, where the Services are performed by a PSC Contractor, the Client and HN acknowledge that the PSC Contractor provides its services in connection with this Agreement as an independent contractor and does not work under the supervision, control or direction of the Client or HN and accordingly neither the Client nor HN is responsible for supervising, monitoring or directing the PSC Contractor whilst working on an assignment. If the Client does, or intends to, supervise and direct any PSC Contractor, the Client shall immediately notify HN of that fact.
- 8.7 The Client acknowledges that HN is in the business of providing resourcing services which comprise the sourcing and introduction of suitable service Contractors to the Client and the contractual arrangements for the provision of their services to the Client. Whilst every effort is made by HN to ensure a reasonable standard of skill, integrity and reliability from the Contractor/Consultant and to provide the Contractor/Consultant in accordance with the Client's requirements, HN cannot accept responsibility for the quality of the Services provided by the Contractor and the Consultant or their activities at locations where the Services shall be performed. Accordingly, HN's liability is limited as set out in this clause 8.
- 8.8 The charges made by HN reflect only those Contractor/Consultant sourcing, selection and introduction services agreed to be supplied by HN and do not indicate acceptance of any liability for the Contractor's or the Consultant's acts or omissions.
- 8.9 HN shall not be liable for any Losses or delay arising from:
- (a) any failure to provide the services of the Contractor and/or Consultant for all or part of the term of this Agreement;
 - (b) the negligent, wrongful, dishonest or fraudulent acts or omissions or misrepresentations of the Contractor or the Consultant, including, without limitation, any lack of skill of the Contractor/Consultant; or
 - (c) theft of any data or material or the negligent driving of the Contractor and/or Consultant
- 8.10 HN's maximum liability pursuant to or arising out of this Agreement shall be limited (insofar as is permitted by law) to £1,000,000. HN shall not be liable for any special indirect or consequential damages or loss (including but not limited to loss of profit (direct or indirect), business, revenue, goodwill, anticipated savings and/or any claims made under third party contracts) arising out of any failure by HN to perform any obligations under this Agreement. HN shall not be liable nor shall it be under any obligation to indemnify the Client or any Client Group Company (including but not limited to any indemnity or warranty given by HN in accordance with this Agreement) against any losses, actions, costs (including but not limited to legal costs), expenses, damages, awards, compensation, fines, Court and/or Tribunal awards and any other liabilities howsoever arising (including but not limited to death or personal injury or damage to property) arising out or connected to (without limitation) any act, omission, instruction, specification, neglect, default or breach of statutory duty of the Client, any Group Company or its or their clients, employees, agents or contractors.
- 8.11 The Client will assist HN in complying with HN's duties (if applicable) under the Working Time Regulations by supplying any relevant information about an assignment requested by HN and the Client will not do anything to cause HN to be in breach of its obligations under such Regulations. Where the Client requires the Services to be performed by a Contractor and/or Consultant for more than 48 hours in any week the Client will notify HN of this requirement before the commencement of that week.
- 8.12 The Client shall indemnify and keep indemnified HN against any Losses incurred by HN arising from and/or as a result of any breach of this Agreement by the Client.

9. Confidentiality

- 9.1 The party to this Agreement to whom an obligation is owed under this clause 9 (being HN where the Client owes the obligation or the Client where HN owes the obligation) shall be referred to as **"the other party"**. In the case of the Client the phrase **"other party"** shall include any Client Group Company.
- 9.2 HN shall ensure that the Contractor and its Consultant(s) shall:
- (a) keep confidential all matters relating to the affairs of the other party including Payment Rates and will not at any time whether during or after the termination of this Agreement disclose any such information to any third party (including for the avoidance of doubt any contractor, consultant or other person engaged by the other party, any client of the other party or any competitor of the other party) or use the same for his or its own benefit;
 - (b) not during or after the termination or expiration of this Agreement make use of for its own purposes or disclose to any person (except the proper officers of the other party or as required by law) any information relating to the proprietary software, business, prospective business, technical processes, finances, designs, Inventions, Intellectual Property Rights, price lists or lists of customers and Contractors of the other party of which he may during this Agreement become possessed all of which information shall be deemed to be confidential.
- 9.3 HN shall use all reasonable due diligence to procure that the Contractor and its relevant Consultant(s) shall give any and all confidentiality undertakings that the Client may reasonably require them to enter into.
- 9.4 All plans, designs, drawings, formulae, correspondence, specifications, price lists, lists of customers and Contractors and all other documents, papers and property which may have been made or prepared by the Contractor or Consultant(s) or have come into or under its or his or HN's possession or control in the continuance of the appointment or which relate in any way to the business or affairs of the Client or of any customer, Contractor, agent or distributor of the Client shall as between HN and the Client be deemed to be the property of the Client and HN shall use all due diligence to procure that:
- (a) they shall, together with all other documents, papers and property in the possession or under the control of the Contractor and/or Consultant(s) and belonging to the Client be delivered up by the Contractor to the Client immediately upon the termination or expiration of the appointment of that Contractor (or at any earlier time on demand by the Client); and
 - (b) the Contractor and Consultant(s) shall not (without the prior written consent of the Client) retain any copy or copies thereof.
- 9.5 The confidentiality provisions set out under this section 9 shall not apply to information already known to HN (or the Contractor and/or Consultant), information in the public domain or information required to be disclosed by law.

10. Intellectual Property Rights

- 10.1 HN will itself, and will use all due diligence to ensure that the Contractor and its Consultant(s) shall, disclose and deliver to the Client for the exclusive use and benefit of the Client all Intellectual Property and Inventions promptly upon the making, devising or discovering of the same, and will give all information and data in their possession as to the exact mode of working, producing and using the same and also all such explanations and instructions to the Client as may in the view of the Client be necessary to enable the full and effectual working, production or use of the same and will furnish it with all necessary plans, drawings, formulae and models.
- 10.2 HN will itself, and will use all due diligence to procure that the Contractor and its Consultant(s) will, execute and do all acts, matters, documents and things reasonably necessary to enable the Client (or its nominee) to apply for and obtain protection for the Intellectual Property Rights and Inventions in any or all countries and to vest title thereto in the Client or its nominee absolutely.
- 10.3 During the continuance of the appointment and at all times thereafter HN will not itself, and will use all due diligence to procure that the Contractor and its Consultant(s) will not, (whether by omission or commission)

do anything to affect or imperil the validity of the protection for the Intellectual Property Rights and Inventions obtained or applied for by the Client or its nominee pursuant to the terms of this clause 10. HN will itself, and will use its reasonable endeavours to procure that the Contractor and its Consultant(s) will, at the direction of the Client render all assistance within its/their power to obtain and maintain such protection or application or any extension thereof.

10.4 In consideration of the fees payable by the Client for the Services, HN hereby assigns to the Client (or its nominee) all rights in and to the Inventions and all Intellectual Property Rights which vest in HN and which relate to or arise out of the Services, present or future.

10.5 Nothing in this Agreement shall oblige the Client or HN to seek patent or other protection for any Invention nor to exploit any Invention.

11. Anti-corruption and Modern Slavery Act

11.1 Either party acknowledges and agrees that the other will not tolerate bribery in any form in connection with the conduct of its business.

11.2 Both parties shall:

- (a) comply with all applicable laws, statutes, regulations, codes and guidance relating to anti-bribery and anti-corruption ("**Anti-Bribery Laws**"), including without limitation the Bribery Act 2010, comply with the Criminal Finances Act 2017 and comply with all applicable laws and codes relating to anti-corruption, forced labour and slavery including without limitation the Modern Slavery Act 2015; and
- (b) not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom; and
- (c) not do, or omit to do, any act that will cause either party to be in breach of the Anti-Bribery Laws; and
- (d) promptly report to the other any request or demand for any undue financial or other advantage of any kind received in connection with the performance of this Agreement.
- (e) immediately notify the other in writing if it is investigated by any law enforcement agency or customer in relation to corrupt practices and/or any breach of Anti-Bribery Laws, Criminal Finances Act, anti-corruption and/or slavery laws.

11.3 Either party shall promptly notify the other if, at any time during the term of this Agreement, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 11.2.

11.4 Breach of this clause 11 shall be deemed a material breach of this Agreement.

11.5 Either party shall indemnify the other against any losses, liabilities, damages, costs and expenses incurred by the non-defaulting party as a result of any breach of this clause 11 by the defaulting party.

12. AWR

12.1 For the purposes of this clause, the following definitions shall apply:

"Agency Worker" has the meaning given under Regulation 3(1) of the AWR;

"Comparable Terms" means the basic and working employment conditions of an individual as of Day One Of The Relevant Qualifying Period to which an individual would be entitled (including Pay, duration of working time, night work rest periods, rest breaks and annual leave) if they were employed or engaged

directly by the Client (including any variations in those relevant terms and conditions made at any time after Day One Of The Relevant Qualifying Period);

"Comparator Pay" means the Pay to which a Deemed Comparator would be entitled;

"Day One Of The Relevant Qualifying Period" means the first day on which the relevant Agency Worker starts work on an assignment which continues for 12 calendar weeks or more such that the Agency Worker completes the qualifying period in accordance with Regulation 7 of the AWR;

"Deemed Comparator" means any **"comparable employee"** within the meaning of Regulation 5(4) of the AWR and including any individual working for and under the supervision and direction of the Client and engaged in the same or broadly similar work as the relevant Temporary Resource having regard, where necessary, to whether they have the same level of qualification and skills;

"Information" means any information, including but not limited to Comparable Terms (including an explanation of the basis on which it is considered that the individual identified as a Deemed Comparator is considered to be a comparable employee) which may help either party to this Agreement comply with their obligations under the AWR;

"Pay" means **"pay"** as defined under Regulation 6(2) of the AWR;

"Temporary Resource" means a Consultant or Contractor.

12.2 HN and the Client shall each comply with their obligations under the AWR and each party shall cooperate fully with the other in connection with the AWR. In particular, the Client shall provide HN on a timely basis, with such Information as HN shall reasonably request from the Client to enable HN to comply with or otherwise evidence HN's and/or the Client's compliance with the AWR and:

- (a) the Client warrants that any Information it provides or has already provided to HN is correct and up to date and that it will notify HN as soon as possible in writing if the Client becomes aware that the Information is incorrect or out of date; and
- (b) the Client will indemnify HN for any Losses arising directly or indirectly from the Client: (a) refusing to provide HN with Information; or (b) providing incorrect and/or out of date Information; or (c) failing to update the Information on a timely basis.

12.3 HN and the Client acknowledge and agree that whether or not a Consultant has rights as an Agency Worker will depend on the facts of that particular supply but as a general rule a Consultant will not be an Agency Worker if they:

- (a) do not work under the supervision and direction of the Client (or HN); or
- (b) do not have a contract of employment, or any other contract with HN to perform work and services personally; or
- (c) carry on a profession and/or their own business undertaking which has the effect that the Client and/or HN are customers or clients of the individual's business,

For the purposes of this clause 12 such service providers shall be defined as a **"Consultants Outside the Scope of the AWR"**.

12.4 For the avoidance of doubt and in accordance with Regulations 12 and 13 of the AWR, the Client will solely be liable for any breaches of any rights under the AWR applicable from the first day of an assignment but HN shall use all reasonable endeavours to assist the Client in relation to such compliance.

12.5 Once HN is provided with accurate and full Information including without being limited to Comparator Pay and HN agrees to continue to supply the services of that Agency Worker HN shall use its reasonable endeavours to agree a fair market rate for the supply of the Services and the recruitment services, although this may from time to time mean that the Payment Rate has to be increased.

- 12.6 HN reserves the right to refuse to make a supply of an Agency Worker where HN has reason to believe that the Payment Rate will (after deduction of HN's normal recruitment services fee or margin) be less than the relevant Comparator Pay;
- 12.7 HN reserves its right to terminate or, where the assignment has not yet commenced, withdraw from the relevant Contract Details without liability and with immediate effect, if the Payment Rate the Client requires would (after deduction of HN's normal recruitment services fee or margin) result in a breach of the AWR.
- 12.8 Where the Services are performed by Consultants Outside the Scope of the AWR the Client shall use all reasonable endeavours to ensure it does not seek to control, give direction to or supervise such individuals. Accordingly, the Client and HN acknowledge and agree that the services of PSC Contractors are engaged on the basis that they are independent contractors operating outside the scope of the AWR. If and when:
- (a) the Client, who has day to day contact with PSC Contractors (and is therefore best placed to assess this), considers that it is exercising supervision and direction over such PSC Contractor(s); or
 - (b) HN notifies the Client that it considers that the status of a PSC Contractor may not be as represented or that the type of work involved does not lend itself to an independent supply,
- then HN shall be entitled to request and the Client shall provide HN with relevant Deemed Comparator Information and the provisions set out in 12.2 above shall apply. HN reserves the right to request an increase in the Payment Rates to allow for Comparable Pay to be paid if Information reveals that the Payment Rate (after deduction of HN's normal recruitment services fee) is less than the Comparable Rate. If the Client does not agree to such an increase the relevant Contract Details may be terminated (pursuant to clause 7.2(e)) by HN without liability and with immediate effect.
- 12.9 The Client shall immediately notify HN if it receives any complaint, request for information or claim from a Contractor and/or Consultant relating to Payment Rate (after deduction of HN's normal recruitment services fee) or any other rights claimed under the AWR. The parties shall work and co-operate together to respond to and resolve any such complaints or claims. The Client undertakes to provide HN with any further Information it may request in order to respond to any such complaint, request for information or claim.

13. Amendment

- 13.1 This Agreement may only be amended by written agreement between a board director of HN (or representatives duly authorised in writing by such board director) and an authorised representative of the Client. A written copy of the varied terms will be given to the Client stating the date on or after which such varied terms shall apply.

14. Communications

- 14.1 Any communication given under this Agreement shall (unless specifically provided otherwise in this Agreement) be in writing and may be sent by hand, first class prepaid post, electronic mail or facsimile.
- 14.2 All communications must be addressed to the party to be served at the relevant postal or electronic mail addresses or facsimile numbers given in this Agreement (or as may be varied by written notice from an authorised representative of one party to the other party).
- 14.3 Any communication served by hand is deemed to be served at the time of actual delivery. Any communication served by post shall be deemed served on the Normal Working Day following that on which it was posted in the United Kingdom. Any notice served by electronic mail or facsimile shall be deemed served at the time of dispatch if dispatched on a Normal Working Day before 5.30 p.m. or in any other case at 10.00 a.m. on the Normal Working Day after the day of dispatch (providing the sending equipment confirms successful transmission).
- 14.4 Signatures provided by electronic mail, facsimile or DocuSign (or such other electronic signature application determined by HN from time to time) shall legally bind the parties to the same extent as original signatures.

15. **General**

- 15.1 **Entire Agreement** This Agreement contains the entire agreement of the parties concerning the subject matter hereof and supersedes and substitutes all previous agreements and arrangements (if any) whether written, oral or implied between HN and the Client relating to the Services. All such agreements and arrangements still effective at the date hereof (if any) shall (without prejudice to the rights of HN arising prior to the Start Date in respect of prior breaches by the Client of which HN is not aware) be deemed to have been terminated by mutual consent with effect from the Start Date (or the Effective Date, whichever is earlier).
- 15.2 **Representations** Each of the parties declares and acknowledges that it is not entering into this Agreement in reliance upon any representation or warranty or understanding express or implied which is not contained expressly in this Agreement and (for the avoidance of doubt) hereby irrevocably and unconditionally waives any right to any remedy of whatsoever nature (whether damages rescission or otherwise) for any breach of any such representation or warranty which there may have been or which may occur.
- 15.3 **Assignment and Sub-contracting:**
- (a) This Agreement is personal to the Client and it shall not be entitled to assign or sub-contract its obligations or rights hereunder to any third party without the prior written consent of HN.
 - (b) HN shall however be entitled to sub-contract its obligations under this Agreement to any third party or to assign this Agreement to any company within the HN group of companies. In the event of an assignment, all references to HN shall be deemed to refer to the assignee.
 - (c) [Only applicable where the Conduct Regulations do apply – see Clause 16] Any sub-contracting or assignment by HN in accordance with Clause 15.3(b)) shall be subject to the Client's prior consent (such consent not to be unreasonably withheld or delayed) if the relevant HN group company is an employment business as defined under the Conduct Regulations.
- 15.4 **Headings** The headings in this Agreement are for ease of reference only and do not affect its interpretation.
- 15.5 **Governing Law and Jurisdiction** This Agreement shall be governed by and construed in all respects in accordance with English law and any disputes resolved by the courts of England.
- 15.6 **Force Majeure** Neither party shall be liable for any breach of its obligations set out in this Agreement which result from causes beyond its reasonable control including, but not limited to, fire, flood, aircraft damage, explosion, electrical failure, strikes, lock-outs, state of national emergency, or government action of any cause whatsoever (whether or not of a similar nature to the above) ('an Event of Force Majeure'). Each of the parties hereto agree to give immediate notice to the other on its becoming aware of an event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure. Failure to give such notice within 3 days of its becoming aware of the Event of Force Majeure will lose the affected party the right to rely on the provisions of this clause. If a default due to an Event of Force Majeure shall continue for more than 1 week, then the party not in default shall be entitled to terminate this Agreement. Neither party shall incur any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.
- 15.7 **Severability** The restrictions contained in this Agreement are considered reasonable by the parties but, if any such restriction shall be found void but would be valid if some part thereof were deleted or the period or area of application reduced, such restriction shall apply with such modification as may be necessary to make it valid and effective. In the event of any clause contained in this Agreement or any part thereof being declared illegal, invalid, void or unenforceable, that clause (or the relevant part) shall be severed from the body of the Agreement and all other clauses or parts thereof contained in this Agreement shall remain in full force and effect and shall not be affected thereby, and, to the extent permitted by law, the clause or part severed shall be replaced with a provision which is of similar effect, but which is not illegal, invalid, void or unenforceable.

15.8 **Third Party Rights** Only the parties to this Agreement shall have the benefit from or any rights hereunder and the parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

15.9 **Advertising** The Client hereby gives its authority to HN to issue or cause to be issued any and all advertisements about positions which the Client seeks to fill and in whatever form and media HN deems to be appropriate and the Client warrants and confirms that if HN issued, or caused to be issued, any advertisement in order to source potentially suitable service providers to provide the Services (or similar services), the Client had, prior to any such issue, given HN authority to source such service providers.

16. Application of the Conduct Regulations to this Agreement

16.1 To the extent that the Contractor and the Consultant have given notice to HN (in accordance with Regulation 32(9) of the Conduct Regulations) of their agreement that the Conduct Regulations shall not apply in respect of the supply of the Services under this Agreement, and such notice continues in effect, then Clauses 4.3, 4.4, 4.5, 4.6 and Clause 15.3(c) shall not apply.

16.2 To the extent that:

- (a) the Contractor and the Consultant have not given a notice as described in Clause 16.1; or
- (b) such notice under Clause 16.1 ceases to have effect in accordance with its terms and Regulation 32(10),

then Clause 4.1 and 4.2 shall not apply.

16.3 It is not necessarily accepted that (even where there is no notice as described in Clause 16.1 in effect) the Contractor and/or the Consultant work or shall work for and under the control of the Client for the purposes of the Conduct Regulations or that the Conduct Regulations apply to the arrangements contemplated by this Agreement.

17. GDPR

The terms "**Personal Data**", "**Data Controller**", "**Data Subject**", "**Data Processor**" and "**process/processing**" (and their derivatives) used in this clause 17 have the meaning given in applicable Data Protection Legislation. References to "**consent**" mean a form of consent which complies with the requirements of Article 7 of the GDPR. "**Client Data**" means any Personal Data (other than Personal Data related to the Consultant) held and processed by the Client, whether as a data controller or data processor.

17.1 Each Party shall comply with the provisions and obligations imposed on them by the Data Protection Legislation when processing Personal Data under this Agreement.

17.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, each Party shall be considered to be a Data Controller with respect to Personal Data processed in connection with this Agreement.

17.3 To the extent that a Party processes any Personal Data on behalf of the other Party, the processing Party shall: (a) comply with the provisions and obligations imposed on a processor by the GDPR, including the stipulations set out in Article 28(3)(a)-(h) which form a part of, and are incorporated into, this Agreement as if they were set out in full, and the reference to "documented instructions" in Article 28(3)(a) shall include the provisions of this Agreement; and (b) not disclose any Personal Data to any Data Subject or to a third party other than at the written request of the other Party or as expressly provided for in this Agreement.

17.4 If either Party receives any complaint, notice or communication which relates to the processing of Personal Data by the other Party or to either Party's compliance with the Data Protection Legislation, or if either Party suffers/any Personal Data processed in connection with this Agreement is subject to a personal data breach (as defined in the GDPR), it shall immediately notify the other Party and provide the other Party with reasonable co-operation and assistance in relation to any such complaint, notice, communication or personal data breach.

17.5 the Client warrants and undertakes that:

- (a) it shall be responsible for notifying the Consultant of its fair processing information and securing any personal undertakings from the Consultant as the Client (or any customer of the Client) may require in relation to the Consultant's access to and processing of Client Data. HN shall not, unless otherwise agreed in writing by the Parties, be responsible or liable for:
 - (i) ensuring that the Consultant receives the Client's fair processing information; or
 - (ii) ensuring that the Consultant receives notice of the Client's fair processing information; or
 - (iii) securing any consents the Client may require from the Consultant in relation to the processing of the Consultant's personal data; or
 - (iv) ensuring that the Consultant processes Client Data in accordance with applicable Data Protection Legislation;
- (b) HN shall not be involved in the processing of Client Data;
- (c) where the Consultant has access to or otherwise processes Client Data, the Client's data processing policies shall apply to such processing; and
- (d) where the Assignment involves or may involve the processing of the Consultant's Personal Data outside the UK or the European Economic Area, the Client shall only process the Consultant's Personal Data in accordance with applicable Data Protection Legislation.

17.6 the Client shall do nothing to place HN in breach of Data Protection Legislation.

17.7 the Client shall indemnify HN for any Losses HN incurs or suffers arising from any breach of the Client's obligations under this clause 17.

18. IR35

18.1 Where an Inside Determination has been provided, clause 6.1 shall not apply.

18.2 The Client undertakes to confirm in writing to HN whether Off-Payroll applies to it. Where the Client confirms that Off-Payroll does not apply to it, the Client confirms that it shall complete an exemption form in a format acceptable to HN to confirm the same.

18.3 Where Off-Payroll applies, the Client undertakes and agrees to assess the working practices of Services to be provided during the Agreement and to provide HN with its status determination statement and the reasons for the decision in writing prior to the commencement of the Agreement and to comply with any applicable statutory requirements to notify the Contractor and/or Consultant.

18.4 Where Off-Payroll applies to the Client or applies to the Client's end client, the Client undertakes and agrees to promptly provide any information reasonably requested at any time by HN in order to assist HN to comply with Off-Payroll.

18.5 In the event notification in accordance with 18.3 is provided to HN after the commencement of this Agreement, the Client agrees and accepts that HN is entitled to vary the Payment Rates and nature of Services in order to comply with Off-Payroll and has the right to terminate with immediate effect in accordance with clause 18.10.

18.6 The Client acknowledges and agrees that HN may increase the Payment Rates set out under the Contract Details in order to comply with Off-Payroll and will notify the Client of such changes in writing.

18.7 The parties acknowledge that AWR, Conduct Regulations and Off-Payroll are not inter dependent and their applicability to the Agreement does not determine supervision, direction or control by the Client or the Client's end client.

- 18.8 The Client warrants to comply with its statutory obligations to provide a status disagreement process and to use best endeavours to resolve status determination disagreements equitably.
- 18.9 Where the Services are Inside IR35 and the Services are performed by a PSC Contractor, PAYE and NICs deductions will be made by HN to payments made to the Contractor in compliance with Off-Payroll.
- 18.10 HN may, at its absolute discretion and at any time, terminate the Agreement upon immediate notice where in the opinion of HN, the Contractor and/or Consultant is no longer suitable to provide the Services, including suitability given Off-Payroll status of Services or where HN believes the Off-Payroll status determination statement provided by the Client is (or becomes) inaccurate, misleading or non-compliant.

19. Harvey Nash Policies

19.1 Policy on Harassment

Harvey Nash are committed to maintaining a respectful, safe, and professional environment for all our employees. As part of this commitment, we will not tolerate any form of harassment towards our employees.

19.2 Commitment to a Safe Work Environment

We are dedicated to providing a work environment that is free from harassment and discrimination. We believe that every employee has the right to work in a safe and respectful atmosphere. We appreciate the cooperation of all clients and suppliers in upholding this policy.

We trust that you share our commitment to these principles and look forward to continuing our professional relationship in a manner that respects the rights and dignity of all individuals.

SCHEDULE 1

DEFINITIONS

1 The following words as used in this Agreement shall have the following meanings:

"Absence Entitlement" means if applicable, the Absence Entitlement set out in the Contract Details.

"AWR" The Agency Workers Regulations 2010;

"Client Group Company" the Client, any body corporate of which the Client is a subsidiary (as defined in Section 1159 of the Companies Act 2006) and any other subsidiary (as so defined) of such body corporate and any subsidiary (as so defined) of the Client;

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

"Conversion Fee" is a sum equivalent to six times the average weekly Payment Rate in force in the twelve weeks before the date on which the Contractor (or any individual engaged via HN and/or the Contractor to perform the Services) ceases to perform the Services for and on behalf of HN. If the Services have been performed for less than twelve weeks before the date on which the Contractor (or any such individual) ceases to perform the Services for and on behalf of HN, the Conversion Fee shall be a sum equivalent to six times the average weekly Payment Rate in force in the weeks leading up to such date. If no Services have been performed on such date, the Conversion Fee shall be four times the weekly Payment Rate set out in the Contract Details;

"Data Protection Legislation" means any laws and regulations in any relevant jurisdiction relating to privacy or the use or processing of data relating to natural persons, including: (a) Data Protection Act 2018 ("DPA") as amended; the United Kingdom General Data Protection Regulation, as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 ("UK GDPR"); and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (b) EU Regulation 2016/679 ("EU GDPR"); and (c) any laws or regulations ratifying, implementing, adopting, supplementing or replacing the EU GDPR, UK GDPR or DPA; in each case, to the extent in force, and as such are updated, amended or replaced from time to time. Unless otherwise specified, reference to the "GDPR" in this Agreement shall include both the EU GDPR and the UK GDPR collectively.

"Engagement" shall be deemed to have occurred where either the Client or any Client Group Company directly or indirectly (other than through HN):

- (a) engages or employs the Contractor (or any individual, such as the Consultant(s), engaged via HN and/or the Contractor); or
- (b) otherwise makes arrangements so that the Contractor (or any such individual) provides services for the Client or any Client Group Company through any other employment business or otherwise.;

"Inside Determination" where the Client has provided a status determination statement in accordance with Off-Payroll which advises HN that the Off-Payroll working rules apply and therefore confirms that the Agreement is deemed to be Inside IR35.

"Inside IR35" where the Client advises HN that the Off-Payroll working rules apply and provides an Inside Determination in accordance with Off-Payroll.

"Intellectual Property Rights" means any copyright works (including without limitation rights in data, drawings, sketches, literary works, artistic works, plans and computer software and whether registered or not), topography rights and other rights in semi-conductor chips, patents, applications for patents, trade marks or trading names (whether or not registered or registrable), rights in or to know-how, whether or not

confidential (including without limitation in plans, models, formulae and computer software), designs (whether or not registered or registrable and including applications for registered designs), design rights, rights in inventions, moral rights, the right to claim damages for past infringements of the same and all rights having equivalent or similar effect (whether statutory or common law rights) wherever situated throughout the world;

"Introduction"

- (a) the interview by the Client of:
 - (i) the Consultant; or
 - (ii) an employee, worker, officer or representative of the Contractor (including, for the avoidance of doubt, the Consultant) in person, by telephone or by video link; or
- (b) the passing by HN to the Client of information which identifies or relates to any of the persons in (a)(i) or (a)(ii) above,

and which, in the case of either (a) or (b), leads to an Engagement, and references to Introduced shall be construed accordingly.

"Inventions" all potentially patentable subject matter developed by the Contractor and/or the Consultant and which arises out of the services of the Contractor or the Consultant alone or with others during the provision of or arising out of the provision of the Services. In this clause potentially patentable subject matter includes all subject matter not excluded from patentability in either the European Patent Office and/or the USA Patent and Trade Mark Office as relevant in the circumstances;

"Introduction Fee" is a sum equivalent to four times the average weekly Payment Rate in force in the twelve weeks before the date on which the Contractor (or any individual engaged via HN and/or the Contractor to perform the Services) ceases to perform the Services for and on behalf of HN. If the Services have been performed for less than twelve weeks before the date on which the Contractor (or any such individual) ceases to perform the Services for and on behalf of HN, the Introduction Fee shall be a sum equivalent to four times the average weekly Payment Rate in force in the weeks leading up to such date. If no Services have been performed on such date, the Introduction Fee shall be four times the weekly Payment Rate set out in the Contract Details.

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

"Off-Payroll" means the HM revenue and Customs' rules on off-payroll working, commonly referred to as "IR35", contained in Chapter 8; and Chapter 10, Part 2 of the Income Tax (Earnings and Pensions) Act 2003, as amended and superseded from time to time.

"Outside Determination" where the Client has provided a status determination statement in accordance with Off-Payroll which advises HN that the Off-Payroll working rules do not apply and therefore confirms that the Agreement is deemed to be Outside IR35.

"Outside IR35" where the Client advises HN that the Off-Payroll working rules do not apply and has provided an Outside Determination in accordance with Off-Payroll.

"PSC Contractor" means an individual who controls and directs their own limited company through which they contract and offer their services on an independent business to business basis.

"Relevant Period" is the longer period of either 14 weeks from the first date on which the Contractor (or any individual engaged via HN and/or the Contractor to perform the Services) performs Services for the Client (but without taking into account for this purpose any break of 42 days or less during which the Contractor or such individual did not perform Services for the Client pursuant to being supplied by HN), or

8 weeks from the day after the date on which the Contractor (or any individual engaged via HN and/or the Contractor to perform the Services) ceases to perform the Services for and on behalf of HN;

- 2 Any references, express or implied, to legislation include references to (i) that legislation as amended, extended or applied by or under any other legislation before or after this Agreement; (ii) any legislation which that legislation re-enacts (with or without modification); and (iii) any subordinate legislation made (before or after this Agreement) under any legislation, including one within paragraph (i) or paragraph (ii) above; but does not include any legislation after the date of this Agreement to the extent that it is retrospective or would increase or extend the liability of HN.
- 3 Words denoting persons shall include bodies corporate and unincorporated associations of persons.
- 4 Where the context permits the singular includes the plural and vice versa and words denoting one gender shall include any gender.