

Cool Company Agency Agreement

1. Definitions and Interpretation

- 1.1. 'the Agency' means the person or company so named on the front page of this Agreement
- 1.2. 'Agency Pay Rate (Agency to Cool Company)' has the meaning given by an Assignment Schedule.
- 1.3. 'Agreement' means this Master Agreement
- 1.4. 'Assignment' means
 - 1.4.1. an assignment to be performed by a Worker engaged by Cool Company, for the benefit of a Hirer contracting with the Agency (or who is contracting with a Client of the Agency), in accordance with a Contract, and
 - 1.4.2. 'assignment' as defined by AWR regulation 2.
- 1.5. 'Assignment Schedule' means a schedule in a form which appears at the Appendix hereto
- 1.6. 'AWR' means the Agency Workers Regulations 2010 as amended from time to time, and the following terms have the meanings given to them in AWR:
 - 1.6.1. Agency Worker - regulation 3
 - 1.6.2. Hirer – regulation 2
 - 1.6.3. Qualifying Period - regulation 7
 - 1.6.4. Temporary Work Agency (also referred to in these Terms as a 'TWA') – regulation 4
- 1.7. 'Client' means a client of the Agency who is a contractual intermediary between the Agency and the Hirer, in circumstances where the Agency does not itself contract directly with the Hirer
- 1.8. 'Conduct Regulations' means the Conduct of Employment Agencies and Employment businesses Regulations 2003 as amended from time to time, and the following terms have the meanings given to them in the Conduct Regulations:
 - 1.8.1. Work-Seeker
 - 1.8.2. Employment business
 - 1.8.3. Work-Finding Services
 - 1.8.4. Vulnerable Person.
- 1.9. 'Contract' means a contract between Cool Company and the Agency for the performance of an Assignment by a Worker for the benefit of a Hirer, and comprising an Assignment Schedule and these Terms; and, in a Contract, the following expressions used in these Terms have the meanings assigned to them in the applicable Assignment Schedule:
 - 1.9.1. 'Agency Pay Rate'
 - 1.9.2. 'Invoice Frequency'
 - 1.9.3. 'Payment Terms'
 - 1.9.4. 'Conduct Regulations Status'
 - 1.9.5. 'Restrictions'.
- 1.10. 'Cool Company' means Cool Company Freelance UK Limited
- 1.11. 'Cool Company Associate' means a company which is an associate company of Cool Company, within the meaning of s256 Companies Act 2006
- 1.12. 'Cool Company Worker' means an individual who is engaged by Cool Company or by a Cool Company Associate
- 1.13. 'EAA' means the Employment Agencies Act 1973.
- 1.14. 'Employment Income' has the meaning given to it by the Income Tax (Earnings and Pensions) Act 2003

- 1.15. 'Employment Overheads' include (but are not necessarily limited to) Employer's national insurance or social security contributions, Apprenticeship Levy, employer's pensions auto-enrolment contributions, and any other sums which are
 - 1.15.1. calculated based on employees' and workers' earnings (not including sums properly deductible from those earnings), and
 - 1.15.2. required by applicable law to be paid by an employer/engager to persons or bodies other than the employee/worker.
- 1.16. 'the Hirer' (in addition to the meaning for the purposes of AWR) means the person or company for whom a Worker is to work, as specified in an Assignment Schedule
- 1.17. 'Hirer No-SDC Confirmation' means confirmation by the Agency that the Hirer has confirmed that the manner in which the Worker provides the services shall not be subject to (or to the right of) supervision, direction or control by any person
- 1.18. 'Inclusive Pay Basis' – where the Agency agrees to engage a Worker from Cool Company on an Inclusive Pay Basis, the rate paid by the Agency is intended to include provision for
 - 1.18.1. gross pay,
 - 1.18.2. paid leave entitlement,
 - 1.18.3. employment overheads, and
 - 1.18.4. Cool Company's own margin.
- 1.19. 'ITEPA' means the Income Tax (Earnings and Pensions) Act 2003
- 1.20. 'Terms' means these Terms of Business
- 1.21. 'Worker' means an individual Work-Seeker, who wishes to work / works as an Agency Worker for a Hirer.
- 1.22. The headings in these Terms are for convenience only and are not intended to have any legal effect.
- 1.23. Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of this Agreement) and all subordinate legislation made (before or after this Agreement) under it from time to time.

2. Introductory

- 2.1. These Terms govern the underlying relationship between Cool Company and the Agency. These Terms also govern Contracts, as evidenced by Assignment Schedules.
- 2.2. These Terms shall apply to all services agreed to be provided by Cool Company, and to all Assignments. Acceptance by Cool Company of any Contract/Assignment is conditional upon acceptance by the Agency that the services to be provided by Cool Company are governed solely by these Terms. In particular, it is agreed that any purchase order or similar document from the Agency relating to the engagement is intended for the Agency's own administrative purposes only, and that notwithstanding its wording, neither a purchase order nor its content will have any legal effect.
- 2.3. Either party may terminate the relationship constituted by these Terms at any time by written notice of such period as may be specified in the notice to the other.
 - 2.3.1. Termination of the relationship constituted by these Terms shall have no effect on any current Assignment, and notwithstanding termination, the relationship constituted by these Terms shall remain in force so far as necessary for the completion of any current Assignments
 - 2.3.2. Termination of an Assignment shall not operate so as to terminate the relationship constituted by these Terms.
- 2.4. These Terms and any Assignment Schedules together constitute the entire agreement(s) between the parties relating to its subject matter, and supersede any earlier agreement between them; any such earlier agreement is hereby terminated by mutual consent.
- 2.5. This relationship between the parties is not exclusive; Cool Company is and remains at liberty to also provide services (including similar services) to third parties, and the Agency is and remains at liberty to engage services (including similar services) from third parties.

3. Respective roles of each party

- 3.1. The Agency is an Employment Business and a TWA, and its business is providing Work-Finding Services to Workers, in order to match Workers with Hirers requiring the performance of Assignments; the Agency does not itself generally act in the capacity of employer, in relation to such Workers.

- 3.2. The business of Cool Company is the engagement and hiring on of Workers to Employment Businesses and Hirers, for the purpose of fulfilling Assignments; Cool Company does not generally itself provide Work-Finding Services to such Workers.
- 3.3. The parties envisage that
 - 3.3.1. Workers will register with the Agency in order to seek Assignments, and the Agency will seek Assignments for such Workers
 - 3.3.2. On a Worker being offered (and indicating a wish to accept) an Assignment, the Agency may (but shall not be obliged to) introduce the Worker to Cool Company
 - 3.3.3. Cool Company or a Cool Company Associate may (but shall not be obliged to) engage the Worker, and contract with the Agency for the provision of the Worker to work in the Position for the performance of the Assignment,
 - 3.3.4. Additionally, there may be occasions when a Worker who is already a Cool Company Worker may be offered an Assignment or a further Assignment by the Agency.
 - 3.3.5. In relation to all such arrangements, the capacity in which each party will act for the purposes of the Employment Agencies Act 1973 shall be that of an Employment business.
- 3.4. The terms on which Cool Company engages any Worker will include provision that the Worker will, when working on an Assignment:
 - 3.4.1. work with all proper skill and care, and in a professional manner
 - 3.4.2. comply with such reasonable requirements (such as timesheets, or electronic time recording system) as may be imposed by the Hirer for recording and verifying time worked
 - 3.4.3. comply with the Hirer's requirements as notified from time to time, to the extent that such requirements apply in relation to external contractors at the place of work, such as security requirements, quality requirements and health and safety procedures, but not so that the Worker's discretion as to the manner in which (s)he performs his/her work is compromised.
- 3.5. In relation to any Worker engaged on an Assignment, Cool Company warrants and confirms that no such Worker has a 'material interest' in Cool Company, within the meaning of sections 51(4) and (5) ITEPA, and that none of the conditions A to C in section 61N ITEPA is met.

4. Other Specific Disclosures required by the Conduct Regulations

- 4.1. The Agency Pay Rate for each Assignment shall be negotiated separately and shall be inclusive of Cool Company's margin. No refunds or rebates are applicable.
- 4.2. If a Worker engaged through Cool Company is unsatisfactory, the Agency should advise Cool Company straightaway and advise Cool Company if the Agency wishes to terminate the Assignment.
- 4.3. Any Worker engaged on an Assignment will be engaged by Cool Company or a Cool Company Associate, and provided to the Agency by Cool Company under a contract for services.
- 4.4. As between the parties, it is the Agency's sole responsibility to select a suitable Worker for an Assignment, and to make all relevant disclosures to Cool Company and to the Worker, including:
 - 4.4.1. the Position and the nature of the work to be done
 - 4.4.2. details of any necessary experience, training, qualifications and authorisations
 - 4.4.3. any applicable constraints on working location and times
 - 4.4.4. the start date and likely duration
 - 4.4.5. any Agency expenses payable by the Hirer
 - 4.4.6. details of any known health and safety risks, and of the steps taken to prevent or control such risks
 - 4.4.7. advising whether an engagement will involve the Worker working with or caring for or attending any Vulnerable Person
 - 4.4.8. providing the Worker with an accurate Key Information Document, as required by Regulation 13A of the Conduct Regulations.

5. Assignments

- 5.1. Where the Agency wishes to place a Worker in an Assignment and to introduce the Worker to Cool Company, or where the Agency wishes to offer a Worker who is already a Cool Company Worker an Assignment, an Assignment Schedule in the form (or, where it is envisaged that a Worker will be placed by the Agency on a succession of multiple short Assignments (each less than 5 days), the Alternative

form) which appears at the Appendix hereto will be produced by the Agency and provided to Cool Company.

- 5.2. On receipt of such an Assignment Schedule
 - 5.2.1. if Cool Company wishes to engage a Worker who is not already a Cool Company Worker, Cool Company or a Cool Company Associate will do so
 - 5.2.2. if Cool Company wishes to accept the terms set out in the Assignment Schedule, Cool Company will promptly sign and return one copy to the Agency
 - 5.2.3. otherwise, Cool Company will promptly advise the Agency.
- 5.3. Upon the earlier of (1) that Assignment Schedule being signed by both parties, and (2) the Agency or the Client or Hirer accepting from a Worker any work in the Position specified in that Assignment Schedule, a Contract on the terms set out in that Assignment Schedule and in these Terms will become binding on the parties.
- 5.4. Any Contract is conditional on (i) the Worker entering a contract with Cool Company or a Cool Company Associate, and (ii) the Agency entering a contract with the respective Client or Hirer (as the case may be) for the Assignment in question and (if that contract is conditional) on that contract becoming unconditional.
- 5.5. The parties envisage that any signatures required by this section may be made and communicated by email or other means of electronic communication.
- 5.6. **In all of its communications with the Worker, the Agency MUST ensure that any information it may give to the Worker about the Agency Pay Rate makes clear that such rate is NOT the rate the Worker him/herself will receive as gross pay.**

6. Contracts

- 6.1. In relation to any Contract, Cool Company's responsibilities are
 - 6.1.1. to second the Worker to work in the Position for the Hirer at the Hirer's Address and elsewhere as specified by the Hirer, for the specified duration of the Assignment; subject to **clauses 3.4** and **6.1.2**, Cool Company has no responsibility for exercising supervision and/or direction and/or control over the Worker
 - 6.1.2. to instruct the Worker to cooperate with the Hirer's reasonable requirements (such as timesheets, or electronic time recording system) for recording and verifying all time so worked
 - 6.1.3. unless a VAT self-billing agreement is in force, to invoice the Agency at the Agency Pay Rate with the Invoice Frequency for all time so worked, accompanied by such evidence as the Agency may reasonably require that the time invoiced has in fact been worked
 - 6.1.4. to ensure that all remuneration it or its Associate pays to the Worker is paid and taxed as Employment Income
 - 6.1.5. to ensure compliance with all relevant legal requirements which are binding on Cool Company or its Associate, and to provide the Agency with such information as the Agency may reasonably request to enable the Agency to do likewise.
- 6.2. In relation to any Contract, the Agency's responsibilities are
 - 6.2.1. to pay Cool Company's invoices calculated at the Agency Pay Rate
 - 6.2.2. to take reasonable steps to ensure that the Hirer verifies all time actually worked by the Worker
 - 6.2.3. to ensure that neither it nor the Client or the Hirer pays any remuneration or expenses in respect of the Worker other than *via* Cool Company
 - 6.2.4. to ensure that all discussions concerning contractual changes or termination are between the Agency and Cool Company only, and not between the Agency and the Worker
 - 6.2.5. to comply with all relevant legal requirements which are binding on the Agency, and to provide Cool Company with such information as Cool Company may reasonably request to enable Cool Company to do likewise.
- 6.3. It is acknowledged by both parties that
 - 6.3.1. all charges are subject to VAT as applicable
 - 6.3.2. there is no obligation on the Agency to make payment other than in respect of time actually worked by the Worker

- 6.3.3. Cool Company will keep the Agency indemnified in respect of any claim or demand made by the proper authorities for all taxes, national insurance or social security contributions, and other liabilities, charges and dues in respect of remuneration paid for work done by the Worker under an Assignment
- 6.3.4. it is not the intention of either party that any Worker should be or become an employee either of the Agency, or of any Client or Hirer
- 6.3.5. no Worker is authorised to enter into, conclude, amend or change, or terminate any Contract on behalf of Cool Company
- 6.3.6. so far as payment is concerned, the Agency's sole obligation is to make payments on the basis provided for in an Assignment Schedule, and the Agency will not be responsible for making any payments for salary, sickness SSP and holiday pay, pensions, and other employee benefits; Cool Company will indemnify the Agency against any claims that may be made by any Worker under employment-related legislation, except where such claim is founded on the Agency's or the Client's or the Hirer's own acts defaults or omissions.

7. Payment

- 7.1. The Agency is responsible for making payment to Cool Company for all services provided by Workers under Contracts at the applicable Agency Pay Rate and Invoice Frequency, and in accordance with the Payment Terms, plus VAT as applicable.
- 7.2. Where the amounts and the make-up of the amounts to be paid are based on time records maintained by the Agency or by a Client or Hirer, the Agency must, according to the Invoice Frequency, provide Cool Company with sufficient information, in an agreed format, to enable Cool Company:
 - 7.2.1. to readily identify the amounts and make-up of the amounts (including the number of hours) to be paid for that period in respect of each Worker and each Contract,
 - 7.2.2. to invoice the Agency, where applicable, and
 - 7.2.3. to make such payments to and in respect of each Worker, on or before the dates such payments are due.
- 7.3. If the Agency fails to make payment by self-billing in accordance with the Payment Terms, notwithstanding that VAT self-billing arrangements may have been agreed, Cool Company may itself invoice the Agency.
- 7.4. So far as payment of Cool Company's invoices is concerned, time is of the essence, and if the Agency does not pay any sum due within the Payment Terms then, without prejudice to any other remedy:
 - 7.4.1. Cool Company may withhold or suspend the provision of further work by any Worker in respect of any Contract; and/or
 - 7.4.2. all sums owing by the Agency to Cool Company on any account shall become due and payable immediately; and/or
 - 7.4.3. the Agency will pay interest and fixed charges as specified in the Late Payment of Commercial Debts (Interest) Act 1998 on all sums due from date of invoice to date of payment both before and after any judgment; and/or
 - 7.4.4. Cool Company may terminate any or all then current Contracts for material breach.
- 7.5. If the Agency has any cause for dissatisfaction with performance of any services by any Worker it must notify Cool Company, and promptly provide any requested further details. Without prejudice to any claim the Agency may have against the Worker,
 - 7.5.1. the Agency may not make deductions or deferrals in respect of any disputes with or claims against Cool Company, until and unless the same have been agreed; and
 - 7.5.2. the Agency may not withhold payment in respect of any time actually spent working in the Position during the Assignment Hours of Work.

8. AWR

- 8.1. The Agency acknowledges that Cool Company operates on the basis that, from the sums paid by the Agency,
 - 8.1.1. Cool Company will retain as its margin a sum openly disclosed to and accepted as reasonable by the Agency and by the Worker; subject thereto, all other funds received from the Agency will be applied
 - 8.1.1.1. first, in payment of National Minimum Wage to the Worker (or a wage at such higher rate as may be agreed between Cool Company and the Worker), in setting aside provision for paid leave entitlement, and in provision for Employment Overheads

- 8.1.1.2. secondly, if applicable, in payment of expenses legitimately reimbursed to the Worker
- 8.1.1.3. thereafter, in payment of the balance to the Worker as Employment Income.
- 8.1.2. the pay (within the meaning of AWR, and including expenses legitimately reimbursed to the Worker) that can be paid to the Worker is therefore determined by the sums paid to Cool Company by the Agency
- 8.1.3. If it comes to Cool Company's notice that the Worker's pay is less than would be required to comply with the AWR, Cool Company will notify the Agency accordingly; and on receipt of such notice, the Agency will
 - 8.1.3.1. In respect of the period up to the date of such notice, pay Cool Company an additional amount sufficient to enable it to comply with its obligations under AWR regulation 5 in relation to pay (including provision for Employment Overheads and any requisite additional paid leave provision) in respect of the period from the end of the Qualifying Period to the date of such notice, and
 - 8.1.3.2. At the Agency's option, either Terminate the Assignment, or increase the Agency Pay Rate to such sum as will enable Cool Company to comply on an ongoing basis with its obligations under AWR regulation 5 in relation to pay.
- 8.2. Alternatively, instead of applying funds received from the Agency as set out in **clause 8.1** above, Cool Company may at its sole discretion elect to engage a Worker for an Assignment on the basis of a Fixed Assignment-Specific Rate.
 - 8.2.1. If Cool Company does so, Cool Company accepts that clauses 8.1.2 and 8.1.3 will not apply.
- 8.3. Cool Company and the Agency
 - 8.3.1. acknowledge that each temporary work agency in the contract chain and the Hirer has a responsibility for complying with the provisions of AWR,
 - 8.3.2. recognize that the prompt and accurate provision of information either to other is necessary for the fulfilment of the parties' respective obligations under AWR,
 - 8.3.3. will mutually cooperate in relation to the prompt provision of such information as may be reasonably required by the other for the purpose of ensuing compliance with AWR,
 - 8.3.4. warrant the accuracy of any such information so disclosed, and
 - 8.3.5. will each indemnify the other against loss suffered as a result of the provision of any such information by it which is inaccurate.
- 8.4. **Clause 14** (Limitation and Exclusion) shall not apply in relation to the liability of either party to the other under this **clause 8** (AWR).

9. CIS and Construction Operations

- 9.1. The applicable Assignment Schedule shall indicate whether or not the services to be provided by the Worker are Construction Operations.
- 9.2. Where (and only where) the services to be provided by the Worker are Construction Operations, the following provisions shall also apply:
 - 9.2.1. In this provision:
 - 9.2.1.1. 'CIS' means the Construction Industry Scheme
 - 9.2.1.2. 'Construction Operations' has the meaning defined by section 74 Finance Act 2004
 - 9.2.2. The Agency operates as a CIS contractor, and Cool Company is registered with HMRC under CIS with gross payment status.
 - 9.2.3. Cool Company shall comply with all its obligations under CIS, and shall immediately notify the Agency of the loss or cancellation of or any change to its CIS status.
 - 9.2.4. Adjudication: Any dispute arising under or out of a Contract may be referred by either party to an adjudicator for adjudication in accordance with the Adjudication Rules published by the Technology and Construction Solicitors Association (2011 Version 3.2).

10. Termination of a Contract

- 10.1. A Contract may be terminated without cause by the Agency or Cool Company giving the other written notice of the applicable period as specified in the Assignment Schedule. Where no period is so specified, such notice may be given to take immediate effect.

- 10.2. A Contract may be terminated at any time by the Agency by written notice with immediate effect if the Worker fails to perform the Assignment in accordance with these Terms, or if the Client or Hirer (as the case may be) has reasonable grounds for dissatisfaction with the Worker, provided the Agency gives Cool Company full written details, and such further cooperation as Cool Company may reasonably require. The Agency acknowledges that such right to terminate is the Agency's sole remedy against Cool Company for any such failure, without prejudice to such rights as the Agency may have against the Worker.
- 10.3. A Contract may be terminated by either party with immediate effect by notice (however communicated, provided confirmed in writing as soon as reasonably practicable):
 - 10.3.1. if the other is in material breach of contract, or is in breach of contract and fails to remedy the breach within seven days of being required in writing to do so
 - 10.3.2. if any distress or execution (in Scotland, diligence) is levied against the other, or if the other makes or seeks to make any composition or arrangement with its creditors, or if the other ceases to carry on business, or if any preliminary step is taken by or in respect of the other party towards the other's liquidation winding up receivership or administration (other than for the purposes of a *bona fide* reconstruction or amalgamation).
- 10.4. A Contract may be terminated by Cool Company with immediate effect by notice (however communicated, provided confirmed in writing as soon as reasonably practicable) if the Worker's engagement with Cool Company terminates (for whatever reason), or if in Cool Company's reasonable opinion in all the circumstances and taking into account the Agency Pay Rate, it is not commercially viable to provide the Worker with his/her entitlements in relation to pay under AWR regulation 5, or if in Cool Company's reasonable opinion it is under a legal obligation to terminate.
- 10.5. In the absence of express agreement to extend, if the Agency continues to accept the Worker's performance of an Assignment after the Assignment End Date and the Worker continues to perform the Assignment, the applicable Contract shall be deemed extended at will and may be terminated at any time without notice by either party.
- 10.6. Save as expressly provided, termination shall not affect any accrued rights of either party, and any obligation of a continuing nature shall remain in force after termination.

11. Intellectual Property Rights

- 11.1. All rights in the nature of intellectual property rights (including, but not limited to, copyright) arising in any work created by a Worker in the course of an Assignment are hereby assigned by way of future assignment of copyright to the Agency, and Cool Company will cooperate with any reasonable requirements as to formal assignment of such rights created.

12. Confidentiality and Secrecy

- 12.1. The parties each recognise that information disclosed to the other in the course of the negotiation of and the performance of a Contract will contain and incorporate confidential information in which the other has an interest.
- 12.2. The parties mutually agree with each other that they will each keep such information confidential, and will neither use nor disclose to a third party any part or the whole of such information (or information gained from such disclosure). This obligation of confidentiality shall not extend so as to include information which was known to a party before disclosure by the other pursuant hereto or with a view to a Contract, or which enters the public domain without fault of that party.

13. Liability

- 13.1. Cool Company has no reason to believe any information presented to the Agency in writing in relation to any Worker with a view to engagement by Contract to perform an Assignment to be other than true.
- 13.2. The Agency has no reason to believe any information presented to Cool Company in writing in relation to any Worker with a view to engagement by Contract to perform an Assignment to be other than true.
- 13.3. The Agency agrees that Cool Company is under no responsibility in relation to any use by the Worker of any vehicle in the course of a Contract.
- 13.4. The parties both acknowledge that it is the Agency's sole responsibility to satisfy itself on all matters relating to the suitability of a Worker for the performance of an Assignment, to the extent that it regards as necessary.
- 13.5. The Agency acknowledges and agree that in performing an Assignment, the Worker is not under the supervision direction or control of Cool Company, and that Cool Company therefore does not accept liability for any acts defaults or omissions of the Worker whilst working (or purporting to work) in the Position.

- 13.6. If
- 13.6.1. a Worker engaged on an Inclusive Pay Basis brings a claim for unlawful deductions from wages, and
- 13.6.2. the basis for such claim is communication(s) from the Agency that can reasonably be interpreted as leading the Worker to believe (incorrectly) that the Agency Pay Rate is the rate the Worker him/herself will receive,

then the Agency will indemnify Cool Company against the Worker's claim and all associated legal costs, including costs incurred by Cool Company in defending the claim.

14. Limitation and Exclusion

- 14.1. **Save to the extent expressly provided herein, all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law, and except to the extent that it is not lawful to limit or exclude such liability, neither party shall be liable to the other or to anyone else for any loss or damage whatever or however caused (and whether or not caused by negligence) arising directly or indirectly in connection with a Contract, in excess of the total sums payable under the relevant Contract during the period from the Assignment Start Date to the Assignment End Date or (if less) one year.**
- 14.2. Notwithstanding the generality of the above, each party expressly excludes liability for consequential loss or damage of any kind, or for loss of profit, business, revenue, goodwill or anticipated savings.
- 14.3. **If any exclusion of liability or other provision contained in these Terms shall be held to be invalid for any reason and Cool Company becomes liable for loss or damage that is capable of being limited in law, such liability shall be limited to £10,000. Cool Company shall not in any event be liable for any claims made against it unless they are notified to it within twelve months of the cause of action arising.**
- 14.4. Cool Company does not exclude or limit liability for death or personal injury to the extent that it arises directly from negligence for which it is legally responsible, or otherwise where it is not lawful to exclude or limit liability.
- 14.5. The Agency acknowledges that all material terms are agreed having regard to the parties' respective existing insurance arrangements and on the basis that liability shall rest as expressly provided by this Agreement, and that in the parties' respective opinions the provisions hereof satisfy the requirements of reasonableness specified in the Unfair Contract Terms Act 1977.

15. Protection of Agency's Business

- 15.1. Where the Conduct Regulations Status is 'opt out' and a Worker has been introduced or supplied to a Client or Hirer (as the case may be) by the Agency, Cool Company will not itself provide that Worker to the Client or Hirer other than under a Contract through the Agency during the period specified under 'Restrictions' following the end of the Contract (or, if there has been no Contract in relation to the supply of that Worker to that Client or Hirer, following the date of introduction).

16. Anti-Facilitation of Tax Evasion

- 16.1. In performing its obligations under this Agreement, Cool Company shall:
- 16.1.1. not engage in any activity, practice or conduct which would constitute either:
- 16.1.1.1. a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
- 16.1.1.2. a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;
- 16.1.2. have and shall maintain in place throughout the term of this Agreement such policies and procedures as are reasonable
- 16.1.2.1. to prevent the facilitation of tax evasion by another person (including without limitation employees of Cool Company) and
- 16.1.2.2. to ensure compliance with **clause 16.1.1**;
- 16.1.3. promptly report to the Agency any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of this Agreement;
- 16.1.4. at the Agency's request, provide the Agency with a statement of such steps it has taken to ensure compliance with the Criminal Finances Act 2017, together with such other information

as the Agency may reasonably require in order to undertake risk assessments to ensure that the Agency is not facilitating tax evasion pursuant to the Criminal Finances Act 2017.

- 16.2. Cool Company shall ensure that any person associated with Cool Company who is performing services and/or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on Cool Company in this clause (**Relevant Terms**). Cool Company shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Agency for any breach by such persons of any of the Relevant Terms.
- 16.3. Breach of this clause shall be deemed a material breach incapable of remedy.
- 16.4. For the purposes of this clause, the meaning of reasonable prevention procedure shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017 and a person associated with Cool Company includes [but is not limited to] any subcontractor of Cool Company.

17. Bribery and Corruption

- 17.1. Cool Company confirms that it has not offered or given or agreed to give to any person employed by or connected with the Agency any gift or any consideration of any kind as an inducement to do or to forbear to do any act in relation to the entry of Cool Company into this Agreement.
- 17.2. Cool Company undertakes to the Agency that:
 - 17.2.1. it will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Anti-Bribery Law**");
 - 17.2.2. it will not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 17.2.3. it has and will maintain in place adequate procedures designed to prevent any conduct that would give rise to an offence under Anti-Bribery Law and to ensure compliance therewith;
 - 17.2.4. it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Agreement; and
 - 17.2.5. from time to time, at the reasonable request of the Agency, it will confirm in writing that it has complied with its undertakings under this provision and will provide any information reasonably requested by the Agency in support of such confirmation of compliance.
- 17.3. In interpreting this provision, regard shall be had to the provisions and definitions of the Bribery Act 2010 and to any current guidance issued pursuant to section 9 thereof.
- 17.4. Breach of any of the undertakings in this clause shall be deemed to be a material breach of this Agreement incapable of remedy.

18. Data Protection

- 18.1. **Definitions:** In this clause,
 - 18.1.1. 'Agreed Purpose' means the performance by each party of its obligations in connection with this Agreement, and the promotion by each party of its products and services.
 - 18.1.2. 'Applicable Laws' means the data protection or privacy laws of any member of the European Union, or the laws of the European Union, and of any other country, to the extent as applicable.
 - 18.1.3. 'Data Protection Legislation' means (i) the Data Protection Act 2018, (ii) the General Data Protection Regulation ((EU) 2016/679) ('GDPR') and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, and (iii) any successor legislation to the Data Protection Act 2018 and the GDPR.
 - 18.1.4. 'controller', 'data controller', 'processor', 'data processor', 'data subject', 'personal data', 'processing', and 'appropriate technical and organisational measures' have the meanings as defined in the Data Protection Legislation.
 - 18.1.5. 'Permitted Recipients' means the parties to this Agreement, the employees of each party, and any third parties engaged to perform obligations in connection with this Agreement.
 - 18.1.6. 'Shared Personal Data': the personal data to be shared between the parties under or in connection with this Agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:
 - 18.1.6.1. names and contact details of actual and potential contractual counterparties of each party;

18.1.6.2. data in relation to assignments to be performed by actual or potential contractual counterparties of one party, via the parties, for an actual or potential contractual counterparty of the other party;

18.1.6.3. data in relation to times worked and services provided on assignments performed by contractual counterparties of one party, via the parties, for contractual counterparties of the other party, for purposes relating to payment of remuneration.

18.2. **Shared Personal Data.** The nature of the relationship constituted by this Agreement is such that the parties envisage that each party will be a controller, and that neither will be in the position of processor in relation to the other. This clause sets out the framework for the sharing of personal data between the parties as controllers. Each party acknowledges that one party (the Data Discloser) will regularly disclose to the other party (the Data Recipient) Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

18.3. **Effect of non-compliance with Data Protection Legislation.** Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this Agreement with immediate effect.

18.4. **Particular obligations relating to data sharing.** Each party shall:

18.4.1. ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;

18.4.2. give full information to any data subject whose personal data may be processed under this Agreement of the nature such processing. This includes giving notice that, on the termination of this Agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;

18.4.3. process the Shared Personal Data only for the Agreed Purposes;

18.4.4. not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;

18.4.5. ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement;

18.4.6. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

18.4.7. not transfer any personal data outside the EEA unless the transferor:

18.4.7.1. complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and

18.4.7.2. ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.

18.5. **Mutual assistance.** Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

18.5.1. consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;

18.5.2. promptly inform the other party about the receipt of any data subject access request;

18.5.3. provide the other party with reasonable assistance in complying with any data subject access request;

18.5.4. not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;

18.5.5. assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

18.5.6. notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;

- 18.5.7. where and to the extent appropriate, at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this Agreement unless required by law to store the personal data;
- 18.5.8. use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- 18.5.9. maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the other party or the other party's designated auditor; and
- 18.5.10. provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

18.6. Indemnity.

- 18.6.1. Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.
- 18.6.2. The liability of the indemnifying party under this clause shall be subject to the limits set out in this Agreement.

19. Equality Act 2010

- 19.1. Cool Company is committed to promoting equal opportunities in employment. Employees, workers, and job applicants will receive equal treatment, regardless of age, disability, gender reassignment, marital or civil partner status, pregnancy or maternity, race, colour, nationality, ethnic or national origin, religion or belief, sex or sexual orientation.
- 19.2. Cool Company will not itself act in a manner which may constitute unlawful discrimination and harassment, and will treat any unlawful discrimination and harassment by its own staff as a disciplinary matter.
- 19.3. Cool Company takes a zero tolerance approach to unlawful discrimination and harassment. No person is authorised in its dealings with or on behalf of Cool Company to act in a manner which may constitute unlawful discrimination and harassment.

20. Modern Slavery Act 2015

- 20.1. In performing its obligations under this Agreement, Cool Company shall:
 - 20.1.1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
 - 20.1.2. have and maintain throughout the term of this Agreement its own policies and procedures to ensure its compliance;
 - 20.1.3. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
 - 20.1.4. require that each of its direct subcontractors and suppliers shall comply with the anti-slavery policy and with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

21. Compliance with all other applicable laws

- 21.1. In addition to the specific requirements for compliance elsewhere in this Agreement, each party expressly agrees with the other that it will at all times
 - 21.1.1. comply with all applicable laws, statutes, regulations and codes from time to time in force ('Compliance'), and
 - 21.1.2. where the other party reasonably considers it might itself be exposed to liability as a result of non-compliance, promptly on request from time to time provide such evidence of Compliance as the other party may request; such evidence may include (but is not limited to) evidence of

Compliance with reporting requirements, evidence of the calculation and making of PAYE and VAT returns and payments, and the provision of copies of payslips.

22. Electronic Signatures

- 22.1. The parties to this Agreement agree that it may be signed by electronic signature (whatever the form the electronic signature takes), and that such method of signature shall be equally conclusive of their intention to be bound by its terms and conditions as if signed with the manuscript signature of both parties.
- 22.2. The parties to this Agreement agree that Assignment Schedules may from time to time be signed by electronic means.
- 22.3. Subject thereto, and notwithstanding that the parties to this Agreement may have signed this Agreement by a form of electronic signature, no addition, amendment to, or modification or discharge of, this Agreement shall be effective otherwise than in writing on paper and signed with the manuscript signature of each party (in the case of a corporate party, by a director on its behalf).

23. Miscellaneous

- 23.1. ***Contracts (Rights of Third Parties) Act 1999 / Contracts (Rights of Third Parties) (Scotland) Act 2017***
No third party rights are intended to be conferred or created by these Terms or by any Contract.
- 23.2. ***Notices***
All notices shall be in writing and shall be deemed to have been duly given when delivered by hand, posted by pre-paid first class post or sent by email to the intended recipient. Notices which have been posted as above shall be deemed received on the second business day following posting. Notices sent by email shall be deemed received when acknowledged.
- 23.3. ***Waiver***
Failure or neglect by either party at any time to enforce any of these Terms shall not be a waiver of that party's rights and shall not prejudice its rights to take action in respect of the same or any later breach.
- 23.4. ***Severability***
If any Term of a Contract is held by any court or other competent authority to be wholly or partially void, invalid, or unenforceable such Term shall be severed from the body of these Terms (which shall continue to be valid and enforceable to the fullest extent permitted by Law).
- 23.5. ***Force Majeure***
 - 23.5.1. If either party to a Contract is prevented or delayed in the performance of any of its obligations by force majeure, then such party shall be excused performance for so long as such cause of prevention or delay shall continue
 - 23.5.2. 'force majeure' shall be deemed to be any cause affecting the performance of a Contract arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of such party.
- 23.6. ***Law***
A Contract is governed by the laws of England and Wales and any questions arising shall be dealt with only by the Courts of England and Wales.