

Agreement

Terms of Business with the Hirer for the supply of a Limited Company Contractor who has opted out of the Conduct Regulations (inside IR35 and under SDC)

THE PARTIES

- (1) The Crewing Company Recruitment Limited (registered company no. 05847280) of Horsley Hale Farm, Horsley Hale, Littleport, Ely, Cambridgeshire, CB6 1ER. ("the Employment Business").
- (2) [Insert Hirer's name] Limited (registered company no. [insert registered company no.]) [trading as [insert trading name if different]] of [address] ("the Hirer") to whom the Intermediary is Introduced. For the avoidance of doubt the Hirer shall also include any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Intermediary is Introduced.

RECITALS

- (A) The Employment Business carries on the business of sourcing and supplying independent contractors to provide services to clients of the Employment Business. The Hirer has instructed the Employment Business to supply an Intermediary to provide certain services ("the Intermediary Services") as specified in the relevant Assignment Details Form.
- (B) The Employment Business will introduce an Intermediary to the Hirer to provide the Intermediary Services subject to the terms of this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement the following definitions apply:

- "Agency Worker" means any officer, employee, worker, or representative of the Intermediary supplied to provide the Intermediary Services;
- "Apprenticeship Levy" means the apprenticeship levy due in accordance with the Finance Act 2017 and the Income Tax (Pay As You Earn) (Amendment) Regulations 2017;
- "Assignment" means the Intermediary Services to be performed by the Agency Worker for the Hirer for a period of time during which the Intermediary is supplied by the Employment Business to the Hirer;
- "Assignment Details Form" means written confirmation of the Assignment details agreed with the Hirer prior to commencement of the Assignment;
- "AWR" means the Agency Workers Regulations 2010;
- "AWR Claim" means any complaint or claim to a tribunal or court made by or on behalf of the Agency Worker against the Hirer and/or the Employment Business for any breach of the AWR;
- "Calendar Week" means any period of seven days starting with the same day as the first day of the First Assignment;
- "Charges" means the charges as notified to the Hirer at the commencement of the Assignment and which may be varied by the Employment Business from time to time during the Assignment. The charges are comprised of the Intermediary's Fees, the Employment Business's commission, and any travel, hotel or other disbursements as may have been agreed with the Hirer and a charge for the Apprenticeship Levy;
- "Comparable Employee" means as defined in Schedule 1 to this Agreement;
- "Conduct Regulations" means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
- "Control" means (a) the legal or beneficial ownership, directly or indirectly, of more than 50% of the issued share capital or similar right of ownership; or (b) the power to direct or cause the direction of the affairs and/or general management of the company, partnership, statutory body or other entity in question, whether through the ownership of voting capital, by contract or otherwise, and "Controls" and "Controlled" shall be construed accordingly;
- "Data Protection Laws" means the Data Protection Act 1998 or any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data;
- "Engagement" means the engagement (including the Intermediary's and/ or the Agency Worker's acceptance of the Hirer's offer), employment or use of the Intermediary's services or the services of any Agency Worker by the Hirer or by any third party to whom the Intermediary and/or any Agency Worker have been introduced by the Hirer, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, an agency, licence, franchise or partnership arrangement, or any other engagement or through any other employment business; and "Engage", "Engages" and "Engaged" shall be construed accordingly;
- "First Assignment" means:
- (a) the relevant Assignment; or
- (b) if, prior to the relevant Assignment:
- (i) the Agency Worker has worked in any assignment in the same role with the relevant Hirer as the role in which the Agency Worker works in the relevant Assignment; and
- (ii) the relevant Qualifying Period commenced in any such assignment, that assignment (an assignment being (for the purpose of this defined term) a period of time during which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Hirer to work temporarily for and under the supervision and direction of the relevant Hirer);
- "FOIA" means the Freedom of Information Act 2000;
- "Hirer's Group" means (a) any individual, company, partnership, statutory body or other entity which from time to time Controls the Hirer, including (but not limited to) as a holding company as defined in section 1159 of the Companies Act 2006; and (b) any company, partnership, statutory body or other entity which from time to time is Controlled by or is under common Control with the Hirer, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006;
- "Intermediary" means the person, firm or corporate body introduced to the Hirer by the Employment Business to carry out an Assignment (and, save where otherwise indicated, includes the Agency Worker);
- "Introduction" means (i) the passing to the Hirer of a curriculum vitae or information which identifies the Intermediary or Agency Worker; or (ii) the Hirer's interview of an Intermediary or Agency Worker (in person, by telephone or by any other means), following the Hirer's instruction to the Employment Business to supply a temporary worker; or (iii) the supply of an Intermediary; and in any case, which leads to an Engagement of that temporary worker, Intermediary or Agency Worker; and "Introduces" and "Introduced" shall be construed accordingly;
- "Introduction Fee" means the fee payable by the Hirer in accordance with clause 8;
- "ITEPA" means the Income Tax (Earnings and Pensions) Act 2003;
- "Losses" means all losses, liabilities, damages, costs, expenses, fines, penalties or interest whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal

fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands and "Loss" shall be construed accordingly;

"NICs Legislation" means the Social Security (Categorisation of Earners) Regulations 1978;

"Public Authority" means a public authority (a) as defined in the FOIA and (b) as further defined in Section 61L ITEPA;

"Qualifying Period" means 12 continuous Calendar Weeks during the whole or part of which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Hirer to work temporarily for and under the supervision and direction of the relevant Hirer in the same role, and as further defined in Schedule 1 to this Agreement;

"Relevant Terms and Conditions" means terms and conditions relating to:

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

that are ordinarily included in the contracts of employees or workers (as appropriate) of the Hirer whether by collective agreement or otherwise and including (for the avoidance of doubt and without limitation) any basic working and employment conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation;

"Remuneration" includes gross base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments taxable, (and, where applicable, non-taxable) payable to or receivable by the Intermediary for services provided to or on behalf of the Hirer;

"Temporary Work Agency" means as defined in Schedule 1 to this Agreement; and

"WTR" means the Working Time Regulations 1998.

1.2. Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.

1.3. The headings contained in this Agreement are for convenience only and do not affect their interpretation.

1.4. Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of this Agreement) and all subordinate legislation made (before or after this Agreement) under it from time to time.

2. THE AGREEMENT

2.1. This Agreement together with the attached Schedules and any applicable Assignment Details Form constitutes the entire agreement ("the Agreement") between the Employment Business and the Hirer for the supply of the Intermediary Services by the Employment Business to the Hirer, and is deemed to be accepted by the Hirer by virtue of its request for, interview with, or Engagement of an Intermediary or the passing of any information about the Agency Worker or Intermediary to any third party following an Introduction.

2.2. Unless otherwise agreed in writing by a director of the Employment Business, this Agreement shall prevail over any terms of business or purchase conditions (or similar) put forward by the Hirer.

2.3. Subject to clause 6.2 no variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between a director of the Employment Business and the Hirer and are set out in writing.

2.4. The Hirer acknowledges that the Intermediary and the Agency Worker carrying out the Assignment have opted out of the Conduct Regulations and that none of the Conduct Regulations apply to any Assignments governed by this Agreement.

3. THE HIRER'S OBLIGATIONS

3.1. The Hirer will comply with its obligations under Regulations 12 (Rights of agency workers in relation to access to collective facilities and amenities) and 13 (Rights of agency workers in relation to access to employment) of the AWR.

3.2. To enable the Employment Business to comply with its obligations under the AWR, the Hirer undertakes as soon as possible prior to the commencement of each Assignment and during each Assignment (as appropriate) and at any time at the Employment Business's request:

3.2.1. to inform the Employment Business of any Calendar Weeks in the 24 months immediately preceding the start of the Assignment and/or during the relevant Assignment in which the relevant Agency Worker has worked in the same or a similar role with the Hirer via any third party and which count or may count towards the Qualifying Period;

3.2.2. if, in the 24 months immediately preceding the start of the Assignment and/or during the relevant Assignment, the relevant Agency Worker has worked in the same or a similar role with the Hirer via any third party to provide the Employment Business with all the details of such work, including (without limitation) details of where, when and the period(s) during which such work was undertaken and any other details requested by the Employment Business;

3.2.3. to inform the Employment Business if, in the 24 months immediately preceding the start of the relevant Assignment and/or during the relevant Assignment the Agency Worker has:

3.2.3.1. completed 2 or more assignments with the Hirer;

3.2.3.2. completed at least 1 assignment with the Hirer and 1 or more earlier assignments with any member of the Hirer's Group; and/or

3.2.3.3. worked in more than 2 roles during an assignment with the Hirer and on at least 2 occasions worked in a role that was not the same role as the previous role.

3.2.4. save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to:

3.2.4.1. provide the Employment Business with written details of the basic working and employment conditions the Agency Worker would be entitled to for doing the same job if the Agency Worker had been recruited directly by the Hirer as an employee or worker at the time the Qualifying Period commenced or with those of a Comparable Employee, such basic working and employment conditions being the Relevant Terms and Conditions;

3.2.4.2. inform the Employment Business in writing whether the Relevant Terms and Conditions provided are those of a hypothetical directly recruited employee or worker or those of a Comparable Employee;

3.2.4.3. if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide the Employment Business with a written explanation of the basis on which the Hirer considers that the relevant individual is a Comparable Employee; and

3.2.4.4. inform the Employment Business in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced; and

3.2.5. save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to provide the Employment Business with written details of its pay and benefits structures and appraisal processes and any variations of the same.

3.3. In addition, for the purpose of awarding any bonus to which the Agency Worker may be entitled under the AWR, the Hirer will:

3.3.1. integrate the Agency Worker into its relevant performance appraisal system;

3.3.2. assess the Agency Worker's performance;

3.3.3. provide the Employment Business with copies of all documentation relating to any appraisal of the Agency Worker, including without limitation written details of the outcome of any appraisal and the amount of any bonus awarded; and

3.3.4. provide the Employment Business with all other assistance the Employment Business may request in connection with the assessment of the Agency Worker's performance for the purpose of awarding any bonus.

- 3.4. The Hirer will comply with all the Employment Business's requests for information and any other requirements to enable the Employment Business to comply with the AWR.
- 3.5. The Hirer warrants that:
- 3.5.1. all information and documentation supplied to the Employment Business in accordance with clauses 3.1 to 3.4 inclusive is complete, accurate and up-to-date; and
- 3.5.2. it will, during the term of the relevant Assignment, immediately inform the Employment Business in writing of any subsequent change in any information or documentation provided in accordance with clauses 3.1 to 3.4 inclusive.
- 3.6. Without prejudice to clauses 12.5 and 12.6, the Hirer shall inform the Employment Business in writing of any:
- 3.6.1. oral or written complaint the Agency Worker makes to the Hirer which is or may be a complaint connected with rights under the AWR; and
- 3.6.2. written request for information relating to the Relevant Terms and Conditions that the Hirer receives from the Agency Worker as soon as possible but no later than 7 calendar days from the day on which any such oral complaint is made to or written complaint or request is received by the Hirer and the Hirer undertakes to take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business, in order to resolve any such complaint or to provide any such information in a written statement to the Agency Worker within 28 days of the Hirer's receipt of such a request in accordance with Regulation 16 of the AWR and the Hirer will provide the Employment Business with a copy of any such written statement.
- 3.7. The Hirer confirms that it is not a Public Authority. If the Hirer is a Public Authority the Employment Business may, if the circumstances require, terminate this Agreement and any Assignments issued under it in accordance with clause 9.3.

4. INFORMATION TO BE PROVIDED BY THE EMPLOYMENT BUSINESS TO THE HIRER

Prior to the commencement of the Assignment, or if this is not practical, upon commencement of the Assignment, the Employment Business will send to the Hirer the information set out in the Assignment Details Form.

5. TIMESHEETS

- 5.1. At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of 1 week or less) the Hirer shall upon request by the Employment Business verify the number of hours worked by the Agency Worker during that week by signature of a timesheet provided to the Hirer for this purpose.
- 5.2. Signature of the timesheet by the Hirer is confirmation of the number of hours worked. If the Hirer is unable to sign a timesheet produced for authentication by either the Agency Worker or the Employment Business because the Hirer disputes the hours claimed, the Hirer shall inform the Employment Business as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what hours, if any, were worked by the Agency Worker. Failure to sign the timesheet does not absolve the Hirer of its obligation to pay the Charges in respect of the hours worked.
- 5.3. The Hirer shall not be entitled to decline to sign a timesheet on the basis that it is dissatisfied with the work performed by the Agency Worker. In the event that the Hirer is dissatisfied with the Agency Worker the provisions of clause 9 shall apply.

6. CHARGES

- 6.1. The Hirer agrees to pay the Charges.
- 6.2. The Employment Business reserves the right to vary the Charges agreed with the Hirer, by giving written notice to the Hirer:
- 6.2.1. in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the AWR, ITEPA, the NICs Legislation, the WTR or the Apprenticeship Levy; and/or
- 6.2.2. if there is any variation in the Relevant Terms and Conditions.
- 6.3. The Employment Business will invoice the Charges to the Hirer on a weekly basis. The Hirer will pay the Charges within 14 days of the date of the invoice.
- 6.4. In addition to the Charges, the Hirer will pay the Employment Business an amount equal to any bonus that the Hirer awards to the Agency Worker in accordance with clause 3.3 immediately following any such award and the Employment Business will pay any such bonus to the Intermediary for onward payment to the Agency Worker. For the avoidance of doubt, the Hirer will also pay any employers' National Insurance contributions and the Employment Business's commission in addition to any bonus payable to the Agency Worker.
- 6.5. VAT is payable at the applicable rate on the entirety of the Charges and all sums payable under clause 6.4.
- 6.6. The Employment Business reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.
- 6.7. The Hirer's obligations under this clause 6 shall be performed without any right of the Hirer to invoke set-off, deductions, withholdings or other similar rights.

7. PAYING THE INTERMEDIARY

The Employment Business is responsible for paying the Intermediary.

8. INTRODUCTION FEES

- 8.1. The Hirer shall be liable to pay the Employment Business an Introduction Fee where the Employment Business Introduces the Intermediary to the Hirer and:
- 8.1.1. the Hirer Engages the Intermediary or any Agency Worker other than through the Employment Business, within a period of 12 months from the termination of the Assignment in respect of which the Intermediary or Agency Worker was supplied, or if there was no supply, within 12 months of the Introduction of the Intermediary or any Agency Worker by the Employment Business to the Hirer; or
- 8.1.2. the Hirer Introduces the Intermediary or any Agency Worker to a third party and such Introduction results in an Engagement of the Intermediary or any Agency Worker by the third party other than through the Employment Business either during the Assignment or within 12 months from the termination of the Assignment.
- 8.2. The Introduction Fee will be calculated at 17.5 % of the Remuneration payable to the Intermediary. Where the amount of the Remuneration payable to the Intermediary is not known, the Introduction Fee will be calculated by multiplying the Charges by:
- (i) 360 where hourly rates have been agreed
- (ii) 45.5 where daily rates have been agreed
- (iii) 9 where weekly rates have been agreed
- 8.3. The Employment Business will not refund the Introduction Fee if the Engagement subsequently terminates.
- 8.4. VAT is payable in addition to any Introduction Fee due.

9. TERMINATION OF THE ASSIGNMENT

- 9.1. Either party may terminate the Assignment by giving to the other party in writing the period of notice specified in the Assignment Details Form.
- 9.2. Notwithstanding the provisions of clause 9.1 the Hirer may terminate the Assignment with immediate effect by notice in writing to the Employment Business where:

- 9.2.1. the Intermediary has acted in breach of any statutory or other reasonable rules and regulations applicable to it while providing the Intermediary Services; or
- 9.2.2. the Intermediary is in wilful or persistent breach of its obligations; or
- 9.2.3. the Hirer reasonably believes that the Intermediary has not observed any condition of confidentiality applicable to the Intermediary from time to time; or
- 9.2.4. the Hirer reasonably considers that the Intermediary's provision of the Intermediary Services is unsatisfactory.
- 9.3. The Employment Business may terminate an Assignment with immediate effect by notice in writing if:
- 9.3.1. the Hirer is in wilful or persistent breach of its obligations under this Agreement and where the breach is capable of being remedied, fails to remedy the breach within 7 days of receiving written notice from the Employment Business to do so; or
- 9.3.2. the Hirer fails to pay any amount which is due to the Employment Business in full and on the date that the payment falls due; or
- 9.3.3. the Hirer is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; or
- 9.3.4. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Hirer; or
- 9.3.5. an order is made for the winding up of the Hirer, or where the Hirer passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation or amalgamation where the resulting entity will assume all the obligations of the other party under this Agreement); or
- 9.3.6. (where the Hirer is an individual) the Hirer dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order; or
- 9.3.7. the Hirer provides or seeks to provide, a fraudulent document which states that the Agency Worker is not subject to (or to the right of) supervision, direction or control of any person as to the manner in which s/he provides his/ her services; or
- 9.3.8. the Employment Business knows or suspects that (a) the Hirer is a Public Authority and (b) the Agency Worker meets the conditions of liability set out in Sections 51 to 53 ITEPA.

10. CONFIDENTIALITY AND DATA PROTECTION

- 10.1. All information relating to an Intermediary and the Agency Worker is confidential and where that information relates to an individual is also subject to the Data Protection Laws and is provided solely for the purpose of providing Intermediary Services to the Hirer. Such information must not be used for any other purpose nor divulged to any third party and the Hirer undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times.
- 10.2. The Employment Business undertakes to keep confidential all Relevant Terms and Conditions that the Hirer discloses to the Employment Business and not to use such information except for the purposes of compliance with the AWR (including, for the avoidance of doubt and without limitation, when dealing with any request for information or complaint made by any Agency Worker or any AWR Claim).
- 10.3. Information relating to the Employment Business's business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.

11. INTELLECTUAL PROPERTY RIGHTS

All copyright, trademarks, patents and other intellectual property rights deriving from the provision of the Intermediary Services by the Intermediary for the Hirer during the Assignment shall belong to the Hirer, save such rights as may be expressly owned or retained by the Intermediary and set out in the Assignment Details Form. Accordingly the Employment Business shall use its reasonable endeavours to ensure that the Intermediary shall (and any relevant Agency Worker shall) execute all such documents and do all such acts in order to give effect to the Hirer's rights pursuant to this clause.

12. LIABILITY

- 12.1. Whilst reasonable efforts are made by the Employment Business to give satisfaction to the Hirer by ensuring reasonable standards of skills, integrity and reliability from the Intermediary and to provide the same in accordance with the Assignment details as provided by the Hirer, no liability is accepted by the Employment Business for any Losses arising from the failure to provide an Intermediary for all or part of the period of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Intermediary or if the Intermediary terminates the Assignment for any reason. For the avoidance of doubt, the Employment Business does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.
- 12.2. The Intermediary supplied by the Employment Business to the Hirer is engaged on a contract for services. The Agency Worker supplied by the Intermediary is deemed to work under (or be subject to the right of) the supervision, direction or control of the Hirer as to the manner in which s/he provides his/ her services for the duration of the Assignment.
- 12.3. The Hirer shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Intermediary and about any requirements imposed by law or by any professional body, which must be satisfied if the Intermediary is to fill the Assignment. The Hirer will comply in all respects with all relevant statutes, by-laws, codes of practice and legal requirements including the provision of adequate public liability insurance in respect of the Intermediary.
- 12.4. If the Agency Worker brings, or threatens to bring, any AWR Claim, the Hirer undertakes to take such action and to give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business and at the Hirer's own cost, to avoid, dispute, resist, mitigate, compromise or defend any such AWR Claim and to appeal against any judgment given in respect thereof.
- 12.5. The Hirer shall inform the Employment Business in writing of any AWR Claim which comes to the notice of the Hirer as soon as possible but no later than 7 calendar days from the day on which any such AWR Claim comes to the notice of the Hirer.
- 12.6. The Hirer shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business by reason of any proceedings, claims or demands by any third party (including specifically, but without limitation, HMRC and any successor, equivalent or related body pursuant to any of the provisions of ITEPA or the NICs Legislation (and/or any supporting or consequential secondary legislation relating thereto)) arising out of any Assignment or arising out of any non-compliance with, and/or as a result of, any breach of this Agreement by the Hirer.

13. NOTICES

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

14. SEVERABILITY

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

15. RIGHTS OF THIRD PARTIES

None of the provisions of this Agreement is intended to be for the benefit of or enforceable by third parties and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

16. GOVERNING LAW AND JURISDICTION

This Agreement is governed by the law of England & Wales and is subject to the exclusive jurisdiction of the Courts of England & Wales.

I confirm I am authorised to sign this Agreement for and on behalf of the Hirer.

Signed for and on behalf of the Hirer.

_____ [print name here]

_____ Date

Schedule 1: "Comparable Employee", "Qualifying Period" and "Temporary Work Agency"

"Comparable Employee" means as defined in Regulation 5(4) of the AWR being an employee of the Hirer who:

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

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

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

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

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

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

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