

- 2.1. This Agreement constitutes the entire agreement between Mainstay and the Client for the supply of consultancies by Mainstay to the Client ("**the Agreement**"). This Agreement is deemed to be accepted by the Client by virtue of its request for, meeting with, or Engagement of a PSC or the passing of any information about a PSC to any third party following an Introduction.
- 2.2. Unless otherwise agreed in writing by a director of Mainstay, this Agreement shall prevail over any terms of business or purchase conditions (or similar) put forward by the Client.
- 2.3. Subject to clause 5.2 no variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between a director of the Mainstay and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.
- 2.4. The Client acknowledges that the PSC and the PSC Staff carrying out the Assignment have opted out of the Conduct Regulations and further that any substitute or any person to whom the performance of the PSC Services has been assigned or sub-contracted has opted out of the Conduct Regulations and that none of the Conduct Regulations apply to any Assignments governed by this Agreement.
- 2.5. As the Client has assessed the Assignment as Outside IR35, the Client acknowledges that:
 - 2.5.1. the PSC may supply any of the PSC Staff to perform the PSC Services; and
 - 2.5.2. where a PSC is unable to provide any part of the PSC Services for whatever reason, the PSC shall be entitled to send a substitute, or to assign or sub-contract the performance of the PSC Services

provided that Mainstay and the Client are reasonably satisfied that the substitute, assignee or sub-contractor has the required skills, qualifications, resources and personnel to provide the PSC Services to the required standard and the terms of any such substitution, assignment or sub-contract contain the same acknowledgements under and obligations imposed by the agreement between the PSC and Mainstay. In these circumstances, the Client shall not unreasonably withhold or delay any agreement sought for the substitution, assignment, or sub-contracting of the PSC Services.

- 2.6. As the Client has assessed the Assignment as Outside IR35, the Client acknowledges that the PSC shall be permitted to determine how it will provide the PSC Services and will have the flexibility to determine the number of hours required and the times worked, to complete the PSC Services, subject to the relevant PSC complying with any reasonable operational requirements of the Client. The PSC will be at liberty to determine the location at which it will provide the PSC Services, but where the PSC Services are undertaken at the Client's site, the PSC will comply with any reasonable requirements relating to working hours, and any other operational requirements in relation to the Client's site. Accordingly, the Client acknowledges that neither the PSC nor any assignee or sub-contractor work under (or subject to the right of) supervision, direction, or control of the Client as to the manner in which they provide the PSC Services.

3. THE CLIENT'S OBLIGATIONS REGARDING THE OFF-PAYROLL RULES

- 3.1. The Client confirms that it is not an Exempt Organisation and so acknowledges that where an individual provides their services through a PSC, the Client has certain obligations under the Off-Payroll Rules. The Client undertakes to advise Mainstay immediately if it becomes an Exempt Organisation.
- 3.2. For Mainstay to meet its obligations under the Off-Payroll Rules the Client will:
 - 3.2.1. give its Status Determination Statement ("**SDS**") to both the PSC Staff originally supplied to provide the PSC Services and Mainstay before the relevant Assignment starts. For the purposes of this Agreement, the Client has determined that the Assignment is Outside IR35. The Client will give complete and accurate reasons for its status decision. The Client will use best endeavours when making its status decision. The Client acknowledges that if it does not give a valid SDS (a) Mainstay may not be able to supply or Introduce a PSC to it but (b) if Mainstay does supply or Introduce a PSC to the Client, the Client will be deemed to be the fee-payer (as defined in the Off-Payroll Rules) until it gives a valid SDS;
 - 3.2.2. the Client will respond in full within 7 days to any query about its SDS raised by any of the PSC, the PSC Staff providing their services through the PSC or Mainstay;

- 3.2.3. the Client will review the circumstances of the Assignment every 6 months to check whether its SDS remains correct. If the Client reviews the circumstances of the Assignment and the status of the Assignment has changed, the Client must withdraw its existing SDS and issue a new SDS immediately, stating the reason and date from which the new SDS applies.

4. CONFIRMATION OF DELIVERY OF THE PSC SERVICES

- 4.1 At the end of each week of the Assignment (or at the end of the Assignment where the Assignment is for a period of less than 1 week or is completed or finished before the end of a week the Client shall confirm delivery of the PSC Services by signature of a form provided to the Client for this purpose.
- 4.2 The Client agrees that by confirming delivery of the PSC Services it also agrees that the PSC Services have been provided satisfactorily, or the Specified Deliverables have been delivered, in accordance with this Agreement. If the Client is dissatisfied with the work performed by a PSC, or considers that the Specified Deliverables have not been delivered, the provisions of clause 9.2 (Termination of an Assignment) shall apply;

5. CHARGES

- 5.1. The Client agrees to pay the Charges as notified to and agreed with the Client as detailed in the Confirmation of Rates document. The Charges are calculated according to the number of hours/days worked by the PSC and comprise the following:
- 5.1.1. The PSC's hourly/daily rate of pay;
- 5.1.2. any travel, hotel or other expenses as may have been agreed with the Client or, if there is no such agreement, such expenses as are reasonable; and
- 5.1.3. Mainstay's commission, which is calculated as a percentage of the PSC's hourly/daily rate.
- 5.2. Mainstay reserves the right to vary the Charges agreed with the Client, by giving written notice to the Client so that it can comply with any additional liability imposed by statute or other legal requirement or entitlement.
- 5.3. Mainstay will invoice the Client on a weekly basis. The Client will pay the Charges within 7 days of the date of the invoice.
- 5.4. Mainstay reserves the right to charge interest A: under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of A: 8% per annum above the base rate from time to time of the Bank of England
- 5.5. The Client will pay the Charges due under this clause 5 and has no right to set-off, deduct or withhold any sums due.

6. PAYING A PSC

Mainstay is responsible for paying the PSC.

7. INTRODUCTION FEES

- 7.1. The Client shall be liable to pay Mainstay an Introduction Fee where Mainstay Introduces the PSC to the Client and:
- 7.1.1. the Client Engages the PSC or any PSC Staff other than through Mainstay either during the Assignment or within a period of 6 months following the termination of the Assignment in respect of which the PSC or PSC Staff was supplied, or if there was no supply, within 6 months of the Introduction of the PSC or PSC Staff by Mainstay to the Client; or
- 7.1.2. the Client introduces the PSC to a third party (including any member of the Client's Group), and such introduction results in an Engagement of the PSC or any PSC Staff by the third party other than via Mainstay either during the Assignment or within 6 months from the termination of the Assignment.

7.2. The Introduction Fee will be payable whether or not the position the PSC is Engaged for is the same position which they were originally Introduced or Engaged for and will be calculated by multiplying either:

- i) the last hourly charge rate agreed between the Client and Mainstay within the relevant Confirmation of Rates by 400 (plus VAT); or
- ii) the last daily charge rate agreed between the Client and Mainstay within the relevant Confirmation of Rates by 50 (plus VAT).

7.3. Mainstay will not refund the Introduction Fee if the Engagement subsequently terminates.

7.4. VAT is payable in addition to any Introduction Fee due.

9. TERMINATION OF THE ASSIGNMENT

9.1. The Assignment will terminate on the end date set out in the relevant Work Schedule. The Client, Mainstay or the PSC may terminate the Assignment earlier by giving written notice for the period of notice specified in the relevant Work Schedule. However, and whenever an Assignment terminates, the Client must pay any Charges due under clause 6 (Charges) above.

9.2. Notwithstanding the provisions of clause 9.1, the Client may terminate an Assignment with immediate effect by notice in writing to Mainstay where:

- 9.2.1. the PSC has acted in breach of any statutory or other reasonable rules and regulations applicable to them while providing the PSC Services; or
- 9.2.2. the Client reasonably believes that the PSC has not observed any condition of confidentiality applicable to that PSC from time to time; or
- 9.2.3. the Client reasonably considers that a PSC 's provision of the PSC Services is unsatisfactory or that the PSC has not delivered the Specified Deliverables.

9.3. Mainstay may terminate an Assignment with immediate effect by notice in writing to the Client if:

- 9.3.1. the Client 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 Mainstay to do so; or
- 9.3.2. the Client fails to pay any amount which is due to Mainstay in full and on the date that the payment falls due; or
- 9.3.3. the Client 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 Client, or an order is made for the winding up of the Client, or where the Client 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
- 9.3.5. Mainstay knows or suspects that the Client is an Exempt Organisation;
- 9.3.6. Mainstay knows or suspects that the Client has not used best endeavours in providing its SDS; or
- 9.3.7. the Client advises that the circumstances of that Assignment have changed so that the Outside IR35 Assignment has become an Inside IR35 Assignment; or
- 9.3.8. Mainstay knows or suspects that the PSC Staff work under (or subject to the right of) supervision, direction or control of any person as to the manner in which they provide the PSC Services, in breach of this Agreement; or
- 9.3.9. the Client does not give accurate and sufficient evidence that the PSC Staff do not work under (or subject to the right of) supervision, direction or control of any person as to the manner in which it provides the PSC Services; or
- 9.3.10. either the Client or the PSC gives Mainstay fraudulent information with the purpose of avoiding the Off-payroll rules or a document which fraudulently states that the PSC Staff do not work under (or is not subject to) the supervision, direction or control of any person as to the manner in which they provide the PSC Services; or
- 9.3.11. where Mainstay knows or suspects that the PSC Staff no longer meet the Conditions of Liability in relation to the PSC; or

- 9.3.12. either the Client or the PSC enters into avoidance arrangements where the main purpose, or one of their main purposes, is to secure a tax advantage; or
- 9.3.13. Mainstay knows or suspects that the Client has breached the Data Protection Laws.

10. END OF CONTRACT

- 10.1 When the Contract is completed (as per the completion date in the Schedule) the Client may renew the Contract as detailed in Clause 11 or may end as detailed in Clause 9. The Client may not Engage with the Contractor for a period of 26 weeks after the end of the Contract other than via Mainstay.
- 10.2 If at the end of the Contract the Client wishes to Engage directly with the Contractor on a permanent basis under a Contract of Employment the Client agrees to pay Mainstay a permanent placement fee equal to 20% of the annual salary offered to the Contractor. The permanent placement fee will be payable within 7 days to Mainstay and no refund will be paid in the event that Engagement with the Contractor under the Contract of Employment terminates.

11. RENEWAL OF CONTRACTS

- 11.1 The Charges and Contract Length for the renewed Contract will be negotiated between Mainstay, the Contractor, and the Client but there is no obligation from any of the parties to renew the Contract or for the Contract to be at the same length or charge rate as previously agreed.

12. CONFIDENTIALITY AND DATA PROTECTION

- 12.1. All information relating to a PSC 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 PSC Services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the information at all times.
- 12.2. The Client must keep confidential all information relating to Mainstay's business which is capable of being confidential and must not divulge such information to any third party, except information which is in the public domain.

13. INTELLECTUAL PROPERTY RIGHTS

All copyright, trademarks, patents and other intellectual property rights resulting from the provision of any Assignment Services by a PSC or any third party to whom the PSC Services are assigned or sub-contracted, shall belong to the Client, except such rights as may be expressly owned or retained by the relevant PSC or assignee or sub-contractor, and set out in the relevant Work Schedule. Accordingly, Mainstay shall use its reasonable endeavours to ensure that a PSC shall (and any relevant member of an Intermediary shall) execute all such documents and do all such acts in order to give effect to the Client's rights under to this clause.

14. LIABILITY

- 14.1. Whilst Mainstay makes reasonable efforts to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from a PSC and to provide the same in accordance with the Assignment details as provided by the Client, Mainstay does not accept liability for any Losses incurred by the Client, arising from the failure to provide a PSC, for completion of the Assignment, the PSC Services, or the Specified Deliverables, or from the negligence, dishonesty, misconduct or lack of skill of a PSC or if a PSC terminates the Assignment for any reason. For the avoidance of doubt, Mainstay 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.
- 14.2. As the Client has determined that the Assignment is an Outside IR35 Assignment, the Client warrants that neither it nor Mainstay has (or has the right to) supervise, direct or control a contractor working through a PSC as to the manner in which they provide the relevant PSC Services. The Client will notify Mainstay in writing if it exercises or seeks the right to exercise supervision, direction or control over a PSC working through a PSC, or the PSC, in which case Mainstay may terminate the Agreement and/or any Assignments under the Agreement in accordance with clause 9.3. Furthermore no member of the PSC Staff is an agency worker as defined under the AWR.

- 14.3. The Client shall advise Mainstay of any special health and safety matters about which Mainstay is required to inform the PSC and about any requirements imposed by law or by any professional body, which must be satisfied if the PSC is to fill the Assignment. The Client 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 PSC.
- 14.4. The Client shall indemnify and keep indemnified Mainstay against any Losses incurred by Mainstay 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 Client.
- 14.5. The Client shall indemnify and keep indemnified Mainstay against any Losses incurred by Mainstay by reason of any proceedings, claims or demands by a PSC or any third party arising out of any non-compliance with, and/or as a result of, any breach of the Data Protection Laws by the Client.

15. 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, including by email. 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, when that email is sent.

16. SEVERABILITY

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

17. THIRD PARTY RIGHTS

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.

18. GOVERNING LAW AND JURISDICTION

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