

SPECIFIC CONDITIONS X5 – RAPID IT WORKFORCE SERVICES

These Specific Conditions govern the Rapid IT Workforce Services that may be provided by the Company under an Order Form, together with any other document or terms and conditions referred to in the Order Form including but not limited to the General Terms & Conditions for the Supply of Products and/or Services (the “**Conditions**”), which shall be deemed to be incorporated into the Contract for the performance of any Rapid IT Workforce Services performed under these Specific Conditions.

1 DEFINITIONS

1.1 Capitalised terms used in these Specific Conditions shall have the following meanings for the purposes of these Specific Conditions only:

“Agency Worker”	means any officer, employee, worker, or representative of the Intermediary supplied to provide the Rapid IT Workforce Services;
“Agency Workers Regulations”	means the Agency Workers Regulations 2010 as amended or replaced from time to time;
“Assignment”	means the Intermediary Services to be performed by the Intermediary for the Customer for a period of time during which the Intermediary is supplied by the Company to provide the Intermediary Services to the Customer;
“AWR Claim”	means any complaint or claim to a tribunal or court made by or on behalf of the Agency Worker against the Customer and/or the Company for any breach of the Agency Workers Regulations;
“Comparable Employee”	means as defined in Regulation 5(4) of the Agency Workers Regulations being an employee of the Customer who: (a) works for and under the supervision of the Customer 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 requirement;
“Conduct Regulations”	means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 as amended or replaced from time to time;
“Deliverables”	means any deliverables provided to the Customer by the Company (which may include designs, surveys, reports and/or bespoke software) as an output of the Rapid IT Workforce Services;
“Direct Engagement”	means the formation of a contract of employment on a temporary or permanent basis with the Agency Worker other than through the Company including the use of an agency, licence, franchise or partnership arrangement, or any other engagement or through any other employment business;
“Engagement ”	means the engagement, employment or use of the Intermediary’s services by the Customer or by any third party to whom the Intermediary have been introduced by the Company, 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;
“Inside IR35”	means the engagement falls within the Off Payroll Working Rules;
“Intermediary”	means the person, firm or corporate body introduced to the Customer by the Company to carry out an Assignment (and, save where otherwise indicated, includes the Agency Worker(s));
“Intermediary Services”	means the Rapid IT Workforce Services provided by the Intermediary;
“Introduction Fee”	means a fee incurred upon and payable by the Customer as a result of the Direct Engagement, as described in paragraph 5.2;
“IR35”	means the intermediaries legislation known as IR35 concerning off payroll working which is set out in the Finance Act 2020 as amended or replaced from time to time;
“IR35 Status Determination Statement”	means the output of an assessment as described in paragraph 3.11;
“ITEPA”	means Income Tax (Earnings and Pensions) Act 2003;
“Off Payroll Working Rules”	means Part 2 Chapter 10 of ITEPA, and the Social Security Contributions (Intermediaries) Regulations 2000 (SI 2000 No 727) as amended or replaced from time to time;
“Outside IR35”	means the engagement falls outside of the Off Payroll Working Rules;
“Qualifying Period”	means 12 (twelve) 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 Customer to work temporarily for and under the supervision and direction of the relevant Customer in the same role, and as further defined in Appendix 1 to these Specific Conditions;
“Rapid IT Workforce Services”	means the Services provided by the Company to the Customer in accordance with these Specific Conditions;
“Relevant Terms and Conditions”	means terms and conditions relating but not limited to pay, duration of working time, night work, rest periods, rest breaks and annual leave that are ordinarily included in the contracts of employees or workers (as appropriate) of the Customer 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; and
“Statement of Works”	means the Order Form or any other relevant contractual document setting out the scope of the Rapid IT Workforce Services as referred to in the Order Form; and
“Temporary Work Agency”	means as defined in Regulation 4 of the Agency Workers Regulations being a person engaged in the economic activity, public or private, whether 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.

1.2 All other capitalised terms used in these Specific Conditions, which are not defined above, shall have the meanings stated in the Conditions.

2 COMMENCEMENT DATE AND TIME FOR PERFORMANCE

2.1 The Commencement Date of the Rapid IT Workforce Services shall be the date specified as such in the Order Form or, if no date is specified, the date on which the Company commences provision of the Rapid IT Workforce Services to the Customer.

2.2 Notwithstanding paragraph 2.1, the Customer shall not be entitled to cancel or terminate any Rapid IT Workforce Services for convenience unless an express right to do so is set out in the Order Form. Any order for Rapid IT Workforce Services shall be binding on the Customer from the Commencement Date until the date upon which the Company has delivered the Rapid IT Workforce Services in full.

2.3 The Company will use its reasonable endeavours to deliver the Rapid IT Workforce Services during the period (if any) stated in the Order Form or, if no such period is stated or other time for performance is specified, the Rapid IT Workforce Services shall be provided within a reasonable time from the Commencement Date.

3 RAPID IT WORKFORCE SERVICES

3.1 Notwithstanding any other provision in this Contract, including any Statement of Works or other attachment to this Contract, and including any design requirements or performance requirements for a design or solution, the Company shall be under no express or implied fitness for purpose obligation in relation to any Deliverables (including any design or technical specifications) arising from the Rapid IT Workforce Services. The Company's design liability (if any) under this Contract shall be limited to the exercise of reasonable skill, care and diligence to be expected of an appropriately qualified person experienced in carrying out designs of a similar nature, size, complexity and value to the scope of the Deliverable.

3.2 Unless otherwise stated in the Order Form, the Customer acknowledges that the Deliverables are provided for the sole benefit of the Customer and shall not be disclosed to or shared with any third party by the Customer.

3.3 The Rapid IT Workforce Services shall be performed during Normal Working Hours unless stipulated otherwise in the Order Form. All dates, periods or times specified in this Contract are estimates only and time shall not be (and shall not be capable of being deemed) of the essence for the performance of the Company's obligations under this Contract.

3.4 If the Company becomes aware that it will be unable to meet any times or timetable set out in an Order Form it may notify the Customer of the same, the reason for the delay and provide an estimate of when the relevant Rapid IT Workforce Services will be performed.

3.5 If, for any reason, any Agency Worker engaged in the Rapid IT Workforce Services become unavailable for the performance of the Rapid IT Workforce Services, the Company will as soon as reasonably practicable substitute a suitably skilled and experienced replacement.

3.6 Any addition, modification or adjustment to the scope of the Rapid IT Workforce Services agreed in the Order Form or relevant Statement of Works and being provided by the Company must be agreed in writing between the parties.

3.7 The parties agree that nothing in this Contract shall render the Agency Worker an employee, worker, agent or partner of the Customer and the parties agree that this is a contract for services and not of employment or secondment of the Agency Worker.

3.8 Upon termination of this Contract, or part of this Contract under which the Rapid IT Workforce Services are provided, the Company will deliver to the Customer all Customer Input Materials and property belonging to the Customer, which may be in the possession or under the control of the Company.

3.9 The Customer acknowledges that the Intermediary and the Agency Worker(s) carrying out the Rapid IT Workforce Services and/or Assignment have opted out of the Conduct Regulations and that the Conduct Regulations do not apply to any Assignments and/or the Rapid IT Workforce Services provided under this Contract.

3.10 An IR35 Status Determination Statement will be completed by the Company in collaboration with the Customer for each new requirement of Rapid IT Workforce Services. The IR35 Status Determination Statement will define if the Agency Worker supplied by the Company to the Customer is Inside IR35 or Outside IR35. The IR35 Status Determination Statement output will include but will not be limited to the following:

- (a) Customer's name;
- (b) Agency Worker's name;
- (c) Agency Worker's start date;
- (d) Agency Worker's end date;
- (e) Intermediary where applicable;
- (f) IR35 Status Determination Statement date completed;
- (g) IR35 Status Determination Statement completed by;
- (h) decision on the Assignment falling Inside IR35 or Outside IR35;
- (i) employment status of the Agency Workers; and
- (j) bullet points of the reasons behind the decision reached for Inside IR35 or Outside IR35.

4 CUSTOMER OBLIGATIONS

4.1 The Customer undertakes to the Company throughout the Term of this Contract (on the request of the Company) to make available all necessary assistance relating to the Rapid IT Workforce Services and/or required for the Company to perform the Rapid IT Workforce Services and provide staff familiar with the Customer's programs and/or applications and/or requirements of the Rapid IT Workforce Services, and shall ensure such staff will fully cooperate with the Company Personnel and Agency Worker to enable the Rapid IT Workforce Services to be performed.

4.2 Upon termination of this Contract, the Customer will deliver to the Company all materials and property belonging to the Company, which may be in the possession or under the control of the Customer.

4.3 The Customer 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 Agency Workers Regulations.

4.4 To enable the Company to comply with its obligations under the Agency Workers Regulations, the Customer undertakes at its earliest opportunity and prior to the commencement of each Assignment, during each Assignment (as appropriate) and otherwise on the request of the Company:

- 4.4.1 to inform the Company of any calendar weeks since 1 October 2011 in which the relevant Agency Worker has worked in the same or a similar role with the Customer via any third party prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment which count or may count towards the Qualifying Period;
- 4.4.2 if, since 1 October 2011, the Agency Worker has worked in the same or a similar role with the Customer via any third party prior to the date of commencement of the relevant Assignment and/or works in the same or a similar role with the Customer via any third party during the relevant Assignment, to provide the Company 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 Company;
- 4.4.3 to inform the Company if, since 1 October 2011, the Agency Worker has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment:
 - (a) completed 2 (two) or more assignments with the Customer;
 - (b) completed at least 1 (one) assignment with the Customer and 1 (one) or more earlier assignments with any member of the Customer's Group; and/or
 - (c) worked in more than 2 (two) roles during an assignment with the Customer and on at least 2 (two) occasions worked in a role that was not the same role as the previous role;
- 4.4.4 save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment:
 - (a) to provide the Company 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 Customer 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;

- (b) to inform the Company 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;
 - (c) if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide the Company with a written explanation of the basis on which the Customer considers that the relevant individual is a Comparable Employee; and
 - (d) to inform the Company in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced.
- 4.4.5 In addition, for the purpose of awarding any bonus to which the Agency Worker may be entitled under the Agency Workers Regulations, the Customer will;
 - (a) integrate the Agency Worker into its relevant performance appraisal system;
 - (b) assess the Agency Worker's performance;
 - (c) provide the Company 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
 - (d) provide the Company with all other assistance the Company may request in connection with the assessment of the Agency Worker's performance for the purpose of awarding any bonus.
- 4.4.6 The Customer will comply with all reasonable requests from the Company for information and any other requirements to enable the Company to comply with the Agency Workers Regulations. The Customer will ensure that:
 - (a) all information and documentation supplied to the Company in accordance with paragraphs 4.3, 4.4.4 and 4.4.5 (d) is complete, accurate and up-to-date; and
 - (b) it will, during the term of the relevant Assignment, immediately inform the Company in writing of any subsequent change in any information or documentation provided in accordance with paragraphs 4.3, 4.4.4 and 4.4.5 (d)
- 4.5 Without prejudice to paragraph 4.10 the Customer shall inform the Company in writing as soon as possible but no later than 3 (three) calendar days from the day on which any such oral complaint or written complaint or request is received by the Customer from an Agency Worker. The Customer shall provide any information and assistance as the Company may request, and within any timeframe requested by the Company, in order to resolve any such complaint. The Customer may be required to provide any such information in a written statement to the Agency Worker within 28 (twenty eight) days of the Customer's receipt of such a request in accordance with Regulation 16 of the Agency Workers Regulations. The Customer will provide the Company with a copy of any such written statement of any:
 - (a) oral or written complaint the Agency Worker makes to the Customer which is or may be a complaint connected with rights under the Agency Workers Regulations; and
 - (b) written request for information relating to the Relevant Terms and Conditions that the Customer receives from the Agency Worker.
- 4.6 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 (one) week) the Customer shall sign the Agency Worker's timesheet verifying the number of hours worked by the Agency Worker during that week.
 - 4.6.1 Signature of the timesheet by the Customer is confirmation of the number of hours worked by the Agency Worker. If the Customer is unable to sign a timesheet produced for authentication by the Intermediary because the Customer disputes the hours claimed, the Customer shall inform the Company within 3 (three) Business Days of receiving a timesheet from the Intermediary and shall co-operate fully and in a timely fashion with the Company to enable the Company to establish what hours, if any, were worked by the Agency Worker.
 - 4.6.2 The Customer acknowledges that it is not entitled to decline to sign a timesheet on the basis that it is dissatisfied with the quality of the work performed by the Agency Worker. In the event that the Customer is dissatisfied with the quality of the work performed by the Agency Worker the provisions of paragraph 4.5 shall apply.
- 4.7 Whilst reasonable efforts are made by the Company to ensure reasonable standards of skills, integrity and reliability from the Intermediary in accordance with the Assignment details as provided by the Customer, the Company shall not be liable for any losses arising from any 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, except in respect of liability for death or personal injury arising from the Company's own negligence or for any other loss which it is not permitted to exclude under law.
- 4.8 Prior to the commencement of an Assignment the Customer shall advise the Company of any health and safety matters which the Company is required to inform the Intermediary of and any requirements imposed by law or by any professional body, which must be satisfied if the Intermediary is to fulfill the Assignment. Where compliance with any health and safety matters results in the Company and/or Intermediary incurring additional costs, the Company reserves the right to recover such additional costs from the Customer and/or terminate the Assignment with immediate effect. The Customer will comply in all respects with all Relevant Laws including the provision of adequate public liability insurance in respect of the Intermediary.
- 4.9 The Customer shall inform the Company in writing of any AWR Claim which comes to the notice of the Customer as soon possible but no later than 3 (three) calendar days from the day on which any such AWR Claim comes to the notice of the Customer.
- 4.10 If the Agency Worker brings, or threatens to bring, any AWR Claim, the Customer undertakes to take such action and to give such information and assistance as the Company may request, and within any timeframe requested by the Company and at the Customer'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.

5 CHARGES

- 5.1 The Charges for Rapid IT Workforce Services will be invoiced monthly in arrears unless stated otherwise in the Order Form.
- 5.2 Additional Charges
 - 5.2.1 An Introduction Fee shall be payable by the Customer to the Company where the Company introduces the Intermediary to the Customer and:
 - (a) the Customer Engages the Intermediary (other than through the Company) before the Assignment, during the Assignment or within a period of 6 months from the termination of the Assignment in which the Intermediary was supplied, or if there was no supply, within 6 months of the Introduction of the Intermediary or any Agency Worker by the Company to the Customer; or
 - (b) the Customer 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 Company within 6 months from the date of the introduction by the Company to the Customer
 - 5.2.2 The Introduction Fee will be calculated at 20% of the remuneration payable to the Intermediary or where the amount of the remuneration payable to the Intermediary is not known, the Introduction Fee will be calculated by multiplying the weekly Charges by 10 (ten). No refund of the Introduction Fee will be paid in the event that the Engagement subsequently terminates.
- 5.3 The Company will not be obliged to provide Rapid IT Workforce Services and/or the Deliverables unless all sums due under this Contract are received as provided for in this Contract.
- 5.4 The Rapid IT Workforce Services may be subject to IR35 however. the Charges assume that the Agency Worker supplied by the Company will be Outside IR35. If the IR35 Status Determination Statement determines that the Agency Worker supplied by the Company to the Customer is Inside IR35, the Company reserves the right to increase the Charges to factor the costs for IR35 compliance.

Appendix 1

For the purpose of the definition of "Qualifying Period" in clause 1.1 of these Specific Conditions, when calculating whether any weeks completed with the Customer count as continuous towards the Qualifying Period, where 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 and break is:

- a) for any reason and not more than 6 (six) calendar weeks;
- b) 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 c) does not apply) and, if required to do so by the Company, the Agency Worker provides such written medical evidence, as may reasonably be required;
- c) 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;
- d) 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 b), c) or d)i, above; or
 - v. for more than one of the reasons listed in this paragraphs d);
- e) 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;
- f) wholly due to a temporary cessation in the Customer'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 Customer;
- g) wholly due to a strike, lock-out or other industrial action at the Customer's establishment; or
- h) wholly due to more than one of the reasons listed in paragraphs (b), (c), (d), (e), (f) or (g); and

the Agency Worker returns to work in the same role with the Customer, any weeks during which the Agency Worker worked for the Customer 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 Customer 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 paragraphs (c) or (d) 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 Customer for the original intended duration or likely duration of the relevant Assignment, whichever is the longer. For the avoidance of doubt, time spent by the Agency Worker working during an assignment before 1 October 2011 does not count for the purposes of the definition of "Qualifying Period".