



Terms of engagement with an umbrella company

4A - Umbrella - mustard - June 2022

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THE PARTIES

- (1) **Apple** Limited (registered company no. **20000**) [trading as *[insert trading name if different]*] of **Nagasaki** (“the Umbrella Company”).
- (2) Mustard Enterprises Limited (registered company no. 06978420) of The Tramshed, 25 Lower Park Row, Bristol, BS1 5BN (“the Employment Business”).

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RECITALS

- (A) The Umbrella Company provides the services of agency workers and has agreed to provide those services (“**the Umbrella Company Services**”) specified in the relevant Assignment Details Form.
- (B) The Employment Business has requested the Umbrella Company and the Umbrella Company has agreed, to supply the Umbrella Company Services to the Hirer on the terms and subject to the conditions of this Agreement.

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement the following definitions apply:

“ Agency Worker ”	means as defined in Regulation 3 of the AWR and includes any of the Umbrella Company’s employees, workers, officers or representatives who provide the Umbrella Company Services to the Hirer;
“ Assignment ”	means the Umbrella Company Services to be provided by the Agency Worker, on behalf of the Umbrella Company, for the period of time during which the Umbrella Company is supplied by the Employment Business to the Hirer;
“ Assignment Details Form ”	means written confirmation of the Assignment details, (including where the Conduct Regulations apply, the details set out in clause 6.2);
“ AWR ”	means the Agency Workers Regulations 2010
“ Bribery Act ”	means the Bribery Act 2010;
“ Calendar Week ”	means any period of seven days starting with the same day as the first day of the First Assignment;
“ Companies Acts ”	means the Companies Acts 1985, 1989 and 2006;
“ Conduct Regulations ”	means the Conduct of Employment Agencies and Employment Businesses Regulations 2003
“ Confidential Information ”	shall mean any and all confidential commercial, financial, marketing, technical or other information or data of whatever nature relating to the Hirer or Employment Business or their business or affairs (including but not limited to this Agreement, data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information concerning the Assignment) in any form or

medium whether disclosed or granted access to, whether in writing, orally or by any other means, provided to the Umbrella Company, the Agency Worker or any third party in relation to the Assignment by the Hirer or the Employment Business or by a third party on behalf of the Hirer whether before or after the date of this Agreement together with any reproductions of such information in any form or medium or any part(s) of such information;

“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 2018, the General Data Protection Regulation (EU 2016/679) and 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 Umbrella Company's and/or the Agency Worker's acceptance of the Hirer's offer), employment or use of any Agency Worker by the Hirer or by any third party to whom the Umbrella Company and/or any Agency Worker has 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, license, franchise or partnership arrangement, or any other engagement, 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);

“Hirer”

means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) and to whom the Umbrella Company is supplied or introduced;

“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 any entity (incorporated or unincorporated), other than Umbrella Company, through which an Agency Worker provides their services to the Hirer;

“ITEPA”

means the Income Tax (Earnings and Pensions) Act 2003;

“Key Information Document”

means the document required under Regulation 13A of the Conduct Regulations;

“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;

“Material Interest”

means:

- (a) in the case of a company, owning, controlling or being entitled to a beneficial interest in more than 5% of the shares; or
- (b) in the case of a partnership, being entitled to the benefit of 60% or more of the profits of the partnership;

“Non-Material Interest”

means:

- (a) in the case of a company, owning, controlling or being entitled to a beneficial interest 5% or less of the shares; or
- (b) they receive, expect, or entitled to receive payment that is not deemed employment income

“MSC Legislation”

means Part 2, Chapter 9 ITEPA;

“NICs Legislation”

means legislation regarding the deduction and payment of national insurance contributions including in particular the Social Security (Categorisation of Earners) Regulations 1978 and the Social Security Contributions (Intermediaries) Regulations 2000;

“Off-Payroll Rules”

means Part 2, Chapter 10 ITEPA;

“Period of Extended Hire”

means (for the purposes of the Conduct Regulations) any additional period that the Hirer wishes the Agency Worker to be supplied beyond the duration of the original assignment or series of assignments as an alternative to paying a Transfer Fee;

“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 the AWR;

“Relevant Period”

means (for the purposes of the Conduct Regulations) whichever ends the later of (a) the period of 8 weeks commencing on the day after the last day on which the Agency Worker worked for the Hirer having been supplied by the Employment Business; or (b) the period of 14 weeks commencing on the first day on which the Agency Worker worked for the Hirer having been supplied by Employment Business; or 14 weeks from the first day of the most recent Assignment where there has been a break of more than 6 weeks (42 days) since any previous assignment;

“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) such terms and any basic working and employment conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation;

“Reporting Requirements”

means the requirements of the Income Tax (Pay as You Earn) (Amendment No. 2) Regulations 2015;

“Safeguarding Legislation”

means the Safeguarding Vulnerable Groups Act 2006

“Specified Intermediary”

means the party required to submit the report to HMRC in compliance with the Reporting Requirements;

“Temporary Work Agency”

means as defined in the AWR;

“Transfer Fee”

means a fee payable by the Hirer to the Employment Business if the Hirer or any third party wishes to Engage the Agency Worker as set out in clauses 3.6 and 3.7;

“Transparency Regulations”

means the Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015;

“Type of Work”

means (for the purposes of the Conduct Regulations) [insert the type of work you expect to supply the Umbrella Company into];

“Umbrella Company Fees”

means the fees payable to the Umbrella Company for the provision of the Umbrella Company Services;

“Vulnerable Person”

means (for the purposes of the Conduct Regulations) any person who by reason of age, infirmity, illness, disability or any other circumstance needs care or attention, and includes any person under the age of 18;

“WTR”

means the Working Time Regulations 1998

- 1.2. Unless the context requires otherwise 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 Schedule and any applicable Assignment Details Form constitutes the entire agreement ("**the Agreement**") between the Employment Business and the Umbrella Company for the supply of the Umbrella Company Services to the Hirer. This Agreement shall prevail over any terms put forward by the Umbrella Company.
- 2.2. This Agreement governs the underlying relationship between the Employment Business and the Umbrella Company and shall govern all Assignments undertaken by Agency Workers on behalf of the Umbrella Company. Termination of an Assignment (in accordance with clause 9) will not terminate the underlying relationship between the Umbrella Company and the Employment Business.
- 2.3. The Employment Business and the Umbrella Company will agree any variations to this Agreement in writing (and, **where the Conduct Regulations apply**: the Employment Business will give a copy of the varied terms (stating the date on or after which the varied terms apply) to the Umbrella Company no later than 5 business days following the day on which they varied the Agreement).
- 2.4. **Where the Conduct Regulations apply**: The Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973) when introducing or supplying the Umbrella Company for Assignments with its Hirer.
- 2.5. The Umbrella Company acknowledges that where both the Agency Worker and the Umbrella Company:
 - 2.5.1. do not opt out of the Conduct Regulations before the start of a relevant Assignment, all of the Conduct Regulations will apply to that Assignment; or
 - 2.5.2. opt out of the Conduct Regulations before the start of a relevant Assignment, none of the Conduct Regulations (except Regulation 13A) will apply to that Assignment.
- 2.6. The Umbrella Company acknowledges that neither it, nor the Agency Worker, can opt out of the Conduct Regulations if the Agency Worker will work with Vulnerable Persons.

3. RELATIONSHIP BETWEEN THE EMPLOYMENT BUSINESS, THE UMBRELLA COMPANY AND THE HIRER

- 3.1. The Employment Business will try to find suitable Assignments for the Umbrella Company performing the agreed Type of Work.
- 3.2. The Umbrella Company shall not be obliged to accept an Assignment offered by the Employment Business.
- 3.3. The Umbrella Company acknowledges that the nature of temporary work means that there may be

periods when no suitable work is available and agrees that:

- 3.3.1. only the Employment Business will determine the suitability of the work to be offered;
- 3.3.2. the Employment Business shall not be liable to either the Umbrella Company or an Agency Worker if it does not offer assignments to either of them.

Independent contractor

- 3.4. The Umbrella Company acknowledges that it provides the Umbrella Company Services to the Employment Business as an independent contractor and that the contract between the Umbrella Company and the Employment Business is a contract for services.
- 3.5. The Umbrella Company employs the Agency Worker and bears sole responsibility for all employer liabilities towards the Agency Worker, including all other statutory and legal requirements relating to an Agency Worker both during Assignments and between Assignments. Nothing in this Agreement shall render any Agency Worker an employee or worker of either the Employment Business or the Hirer. The Umbrella Company shall ensure that the Agency Worker does not hold themselves out as an employee or worker of either the Employment Business or the Hirer. If anyone should try to establish any liability or obligation upon the Employment Business on the grounds that the Agency Worker is an employee or worker of the Employment Business or the Hirer, the Umbrella Company shall upon demand indemnify the Employment Business and keep it indemnified in respect of any such liability or obligation and any related Losses which the Employment Business or Hirer shall incur.

Transfer Fees

- 3.6. If before or during an Assignment (or, **where the Conduct Regulations apply:** during the Relevant Period) the Hirer wishes to Engage an Agency Worker directly or through another employment business, the Umbrella Company acknowledges on its own behalf, and on behalf of the Agency Worker, that the Employment Business will be entitled to charge the Hirer a Transfer Fee. (**Where the Conduct Regulations apply:** As an alternative to the Transfer Fee the Hirer may choose to use the Agency Worker's services for a Period of Extended Hire at the end of which the Hirer may engage the Agency Worker directly or through another employment business without further charge to the Hirer).
- 3.7. The Employment Business will also be entitled to charge the Hirer a Transfer Fee if the Hirer introduces the Umbrella Company to a third party (including any member of the Hirer's Group) who subsequently Engages any Agency Worker before or during an Assignment (or, **where the Conduct Regulations apply:** within the Relevant Period).

The AWR

- 3.8. If the Agency Worker completes the Qualifying Period, and if the Agency Worker is entitled to any Relevant Conditions, those Relevant Terms and Conditions will be as set out in the relevant Assignment Details Form or any variation to the relevant Assignment Details Form (as appropriate) and the Umbrella Company will give the Agency Worker any such entitlements.
- 3.9. The Umbrella Company will advise the Employment Business in writing no later than the start of this Agreement, if the Umbrella Company continues to employ Agency Workers on contracts of employment which met the requirements of AWR Regulation 10 before its repeal on 6 April 2020 ("**AWR Regulation 10 Contracts**"). If the Umbrella Company continues to employ Agency Workers on

AWR Regulation 10 Contracts, the Umbrella Company undertakes to give equal pay and other equal treatment entitlements to those Agency Workers when they complete the Qualifying Period, and will indemnify the Employment Business against any AWR claims if should fail to do so.

- 3.10. As a Temporary Work Agency, the Umbrella Company will comply with the AWR in all relevant respects.
- 3.11. Except to the extent any Losses result from any act or omission of the Employment Business or the Hirer, the Umbrella Company shall indemnify and keep indemnified the Employment Business (or, as the case may be, the Hirer) against any Losses the Employment Business (or the Hirer) may suffer or incur as a result of any claim made by or on behalf of the Agency Worker under the AWR.

4. WARRANTIES PROVIDED BY THE UMBRELLA COMPANY

- 4.1. The Umbrella Company warrants to the Employment Business that:
 - 4.1.1. by entering into and performing its obligations under this Agreement it will not be in breach of any obligation which it owes to any third party;
 - 4.1.2. the Agency Worker has the necessary skills and qualifications to provide the Umbrella Company Services;
 - 4.1.3. the Agency Worker does not have and will not have a Material Interest or Non-Material Interest in the Umbrella Company or any other Intermediary and the Off-payroll rules do not apply, for the duration of any Assignment during which they provide the Umbrella Company Services.
 - 4.1.4. the Umbrella Company employs the Agency Worker and has not and will not engage the Agency Worker through another Intermediary;
 - 4.1.5. the Umbrella Company will not provide any fraudulent documentation or enter into any arrangements or schemes designed to avoid the payment of PAYE income tax and national insurance due under ITEPA (including the Off-Payroll Rules) and the NICs legislation. This includes but is not limited to paying the Agency Worker through another Intermediary;
 - 4.1.6. the Umbrella Company is incorporated in the UK and that all directors are resident in the UK for tax purposes;
 - 4.1.7. the Umbrella Company will pay the Agency Worker only into a nominated UK bank account in the Agency Worker's name;
 - 4.1.8. all information the Umbrella Company provides to the Employment Business to comply with the Reporting Requirements and clauses 5.1.10 to 5.1.17 inclusive is complete and accurate;
 - 4.1.9. the Umbrella Company and the Agency Worker will comply with the Data Protection Laws; and
 - 4.1.10. the Umbrella Company will not offer any reward or inducement to the Employment Business or any of the Employment Business's staff to use the Umbrella Company Services, including where such reward or inducement might be deemed to be a bribe under the Bribery Act 2020.

5. THE UMBRELLA COMPANY'S OBLIGATIONS

- 5.1. The Umbrella Company agrees on its own part and on behalf of the Agency Worker if it accepts any Assignment offered by the Employment Business as follows:
- 5.1.1. to co-operate with the Hirer's reasonable instructions and accept the direction of any responsible person in the Hirer's organisation within the scope of the Assignment;
 - 5.1.2. to observe any relevant rules and regulations of the Hirer's establishment or the premises where the Umbrella Company Services are being performed and to which attention has been drawn or which the Umbrella Company or Agency Worker might reasonably be expected to be aware of, including but not limited to those relating to health and safety to the extent that they are reasonably applicable to the Umbrella Company or the Agency Worker;
 - 5.1.3. to take all reasonable steps to safeguard its own safety, the safety of the Agency Worker and the safety of any other person who may be affected by the actions of the Agency Worker whilst on the Assignment;
 - 5.1.4. to comply with the Data Protection Laws in respect of any personal data which the Umbrella Company is granted access to for the purpose of or by reason of the performance of the Umbrella Company Services;
 - 5.1.5. not to divulge to any person, nor use for its own or any other person's benefit, any Confidential Information relating to the Hirer's or the Employment Business's employees, business affairs, transactions or finances;
 - 5.1.6. not to engage in any conduct detrimental to the interests of the Employment Business and/or the Hirer which includes any conduct which could bring the Employment Business and/or the Hirer into disrepute and/or which results in the loss of custom or business by either the Employment Business or the Hirer;
 - 5.1.7. not to commit any act or omission constituting unlawful discrimination against or harassment of any member of the Employment Business's or the Hirer's staff;
 - 5.1.8. not to sub-contract or assign to any third party any of the Umbrella Company Services which it or the Agency Worker is required to perform under any Assignment;
 - 5.1.9. to give the Hirer and/or the Employment Business any progress reports it may request from time to time;
 - 5.1.10. to notify the Employment Business immediately in writing if it becomes insolvent, or if any of the arrangements set out in clauses 9.2.5 to 9.2.7 apply;
 - 5.1.11. to comply with all relevant legal obligations, including but not limited to ITEPA, the NICS Legislation, VAT legislation and the Companies Act;
 - 5.1.12. to give the Employment Business all information it may need to comply with (a) the Reporting Requirements where it is the Specified Intermediary or (b) any contractual obligations the Employment Business has to provide information to the Specified Intermediary (where it is a

party other than the Employment Business) to enable the Specified Intermediary to comply with its Reporting Requirements;

- 5.1.13. to notify the Employment Business in writing immediately if it becomes subject to a HMRC investigation or compliance activity including but not limited to any of ITEPA, the NICs legislation or VAT legislation;
- 5.1.14. to give the Employment Business a copy of the terms under which the Umbrella Company has engaged the Agency Worker;
- 5.1.15. to give the Employment Business on request, any information required to comply with Transparency Regulations 2015; and
- 5.1.16. the Umbrella Company will complete a Key Information Document and will submit complete and accurate information to the Employment Business;
- 5.1.17. to update the Employment Business immediately where any of the information required under clauses 5.1.10 to 5.1.16 inclusive changes.

5.2. As soon as possible prior to the start of each Assignment and during each Assignment (as appropriate) and at any time at the Employment Business's request, the Umbrella Company undertakes to:

- 5.2.1. inform the Employment Business of any Calendar Weeks in which the Agency Worker has worked in the same or a similar role with the relevant Hirer through any third party and which the Umbrella Company and/or the Agency Worker believes count or may count toward the Qualifying Period; and
- 5.2.2. give the Employment Business 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; and
- 5.2.3. inform the Employment Business if the relevant Agency Worker has:
 - 5.2.3.1. completed two or more assignments with the Hirer;
 - 5.2.3.2. completed at least one assignment with the Hirer and one or more earlier assignments with any member of the Hirer's Group; and/or
 - 5.2.3.3. worked in more than two roles during an assignment with the Hirer and on at least two occasions worked in a role that was not the same role as the previous role.

5.3. If the Agency Worker is unable for any reason to provide the Umbrella Company Services during the course of an Assignment, the Umbrella Company should tell the Employment Business as soon as possible, but in any event no later than 1 hour after the start of the Assignment or shift. If it is not possible to tell the Employment Business within these timescales, the Umbrella Company should alternatively tell the Hirer and then the Employment Business as soon as possible.

5.4. If, either before or during the course of an Assignment, the Umbrella Company becomes aware of

any reason why it or the Agency Worker supplied to perform the Umbrella Company Services may not be suitable for an Assignment, the Umbrella Company shall notify the Employment Business without delay. This includes but is not limited to any information the Employment Business may require to meet its obligations under the Safeguarding Legislation and to give information to the Disclosure and Barring Service (or the equivalent authority).

5.5. The Umbrella Company acknowledges that any breach of its obligations set out in clause 4 (Warranties provided by the Umbrella Company) and this clause 5 (The Umbrella Company's Obligations) may cause the Employment Business to suffer Losses and that the Employment Business reserves the right to recover such Losses from the Umbrella Company by set off or deduction from any sums owed by the Employment Business to the Umbrella Company.

5.6. The Umbrella Company will include the appropriate provisions in its contracts with Agency Workers to ensure their compliance with clauses 4 and 5 of this Agreement.

6. THE EMPLOYMENT BUSINESS'S OBLIGATIONS

6.1. Subject to any right of set off or deduction set out in clause 5.5, throughout the term of this Agreement the Employment Business will pay the Umbrella Company:

6.1.1. **Where the Conduct Regulations apply:** at least the Minimum Rate in respect of the provision of the Umbrella Company Services. The actual Umbrella Company Fees will be confirmed on a per Assignment basis; or

6.1.2. **Where the Conduct Regulations do not apply:** the Umbrella Company Fees in respect of the provision of the Umbrella Company Services in accordance with clause 8.

6.2. **Where the Conduct Regulations apply:** At the same time as an Assignment is offered to the Umbrella Company, the Employment Business shall give the Umbrella Company an Assignment Details Form setting out the following information:

6.2.1. the identity of the Hirer, and if applicable the nature of their business;

6.2.2. the date the Assignment is to commence and the duration or likely duration of the Assignment;

6.2.3. the Type of Work, location and hours during which the Umbrella Company would be required to provide the Umbrella Company Services;

6.2.4. the Umbrella Company Fees and any expenses payable by or to the Umbrella Company;

6.2.5. any risks to health and safety known to the Hirer in relation to the Assignment and the steps the Hirer has taken to prevent or control such risks; and

6.2.6. what experience, training, qualifications and any authorisation required by law or a professional body the Hirer considers necessary or which are required by law to work in the Assignment.

6.3. **Where the Conduct Regulations apply:** Where the Employment Business does not give the information in clause 6.2 in paper form or by electronic means, it shall confirm that information by such

means by the end of the third business day (excluding Saturday, Sunday and any public or bank holiday) following, except where:

6.3.1. the Umbrella Company is being offered an Assignment in the same position as one in which the Agency Worker had previously been supplied within the previous 5 business days and such information has already been given to the Umbrella Company; or

6.3.2. subject to clause 6.4, the Assignment is intended to last for 5 consecutive business days or less and such information has previously been given to the Umbrella Company and remains unchanged, the Employment Business needs only to provide written confirmation of the Hirer's identity and the likely duration of the Assignment.

6.4. **Where the Conduct Regulations apply:** Where the provisions of clause 6.3.2 are met but the Assignment extends beyond the intended 5 consecutive business day period, the Employment Business shall give such information set out in clause 6.2 to the Umbrella Company in paper or electronic form within 8 days of the start of the Assignment.

7. PAYING THE UMBRELLA COMPANY

7.1. **Where the Conduct Regulations apply:** Subject to clause 8.2 the Employment Business undertakes to pay the Umbrella Company for all hours worked regardless of whether the Employment Business has received payment from the Hirer for those hours.

7.2. **Where the Conduct Regulations apply:** Where the Umbrella Company does not confirm delivery of the Umbrella Company Services, the Employment Business shall, in a timely fashion, investigate the hours claimed by the Umbrella Company and the reasons that the Umbrella Company has not produced such confirmation. **This may delay any payment due to the Umbrella Company.** The Employment Business will not pay the Umbrella Company for work not carried out.

7.3. **Where the Conduct Regulations apply:** Subject to receiving the Umbrella Company's invoice in accordance with clause 7, the Employment Business will pay the Umbrella Company Fees within 14 days of receipt of the Umbrella Company's invoice.

7.4. **Where the Conduct Regulations do not apply:** The Employment Business will pay the Umbrella Company Fees within 14 days of receipt of the Umbrella Company's invoice subject to:

7.4.1. the satisfactory performance of the Umbrella Company Services

7.4.2. the Umbrella Company's compliance with this Agreement

7.4.3. the Employment Business's receipt of the Umbrella Company's invoice in accordance with clause 7 above; and

7.4.4. payment by the Hirer of the Employment Business's charges for the Umbrella Company Services.]

7.5. When the Agency Worker completes the Qualifying Period, the Employment Business reserves the right to vary the Umbrella Company Fees if there is any variation in the Relevant Terms and Conditions. The Employment Business will vary the relevant Assignment Details Form and the Umbrella Company shall ensure that, if at any time the Employment Business varies the Umbrella Company Fees in accordance with this clause 8.5, the Umbrella Company will, at the same time, make the same variations to the corresponding payments the Umbrella Company makes to the Agency Worker.

- 7.6. Under the AWR, on completion of the Qualifying Period the Agency Worker may be entitled to annual leave in addition to the Agency Worker's entitlement to paid annual leave under the WTR. If this is the case, the Employment Business will pass the relevant information it receives from the Hirer to the Umbrella Company. The Umbrella Company will pass this information to the Agency Worker and, if the Employment Business pays the Umbrella Company for additional leave under the AWR, the Umbrella Company will make the same payment(s) to the Agency Worker.
- 7.7. On completion of the Qualifying Period the Agency Worker will be entitled to the Relevant Terms and Conditions, which may include a bonus. The Umbrella Company will, and will procure that the Agency Worker will, comply with any requirements of the Employment Business and/or the Hirer relating to the assessment of the Agency Worker's performance for the purpose of determining whether or not the Agency Worker is entitled to a bonus and the amount of any such bonus. If, subject to satisfying the relevant criteria, the Agency Worker is entitled to receive a bonus, the Employment Business will pay the bonus to the Umbrella Company subject to any appropriate deductions and the Umbrella Company will pay the bonus to the Agency Worker.
- 7.8. The Employment Business will pay the Umbrella Company only and will not pay any third party or the Agency Worker directly (unless required by law to do so). The Employment Business will pay the Umbrella Company Fees into a UK business bank account in the Umbrella Company's name only.
- 7.9. The Employment Business shall not be obliged to pay the Umbrella Company for: any periods during which the Umbrella Company Services are not provided, whether this is due to either the Umbrella Company or the Agency Worker being unable to provide the Umbrella Company Services or where the Hirer does not require the Umbrella Company Services, or otherwise in respect of annual leave (except in accordance with clause 8.6), illness or absence of the Agency Worker.

8. TERM AND TERMINATION

- 8.1. Either of the Employment Business or the Umbrella Company may terminate an Assignment in writing at any time without prior notice or liability, except in relation to time already worked and invoices [already submitted] and which remain unpaid at the date of termination, unless a specific notice period is required and set out in a relevant Assignment Details Form.
- 8.2. Notwithstanding clauses 9.1 and 9.3 of this Agreement, where required by the Hirer, the Employment Business may without notice and without liability to either the Umbrella Company or the Agency Worker, instruct the Umbrella Company to cease work on an Assignment at any time, where:
- 8.2.1. either of the Umbrella Company or the Agency Worker has acted in breach of the rules and regulations applicable to third parties providing services to the Hirer or to the Hirer's own staff; or
 - 8.2.2. either of the Umbrella Company or the Agency Worker has committed any serious or persistent breach of any of its obligations under this Agreement; or
 - 8.2.3. the Hirer reasonably believes that either of the Umbrella Company or Agency Worker has not observed any condition of confidentiality from time to time; or
 - 8.2.4. the Hirer is dissatisfied with either of the Umbrella Company's or the Agency Worker's provision of the Umbrella Company Services and has terminated the Assignment; or

- 8.2.5. either the Hirer or the Umbrella Company 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
- 8.2.6. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Hirer or the Umbrella Company; or
- 8.2.7. an order is made for the winding up of the Hirer or the Umbrella Company, or where the Hirer or the Umbrella Company 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
- 8.2.8. the Umbrella Company or the Agency Worker is suspected of any fraud, dishonesty or serious misconduct; or
- 8.2.9. the Umbrella Company or the Agency Worker is unable to perform the Umbrella Company Services for 2 days or more; or
- 8.2.10. the Umbrella Company does not comply with clause 13.3; or
- 8.2.11. the Employment Business knows or suspects that the Umbrella Company has given incomplete or inaccurate information for the purposes of the Key Information Document;
- 8.2.12. the Employment Business knows or suspects that the Umbrella Company has or proposes to engage the Agency Worker through another intermediary, including but not limited to an intermediary in which the Agency Worker has a Material Interest or Non-Material interest;
- 8.2.13. the Employment Business knows or suspects that the Umbrella Company promotes or has entered into arrangements or schemes designed to avoid the payment of PAYE income tax and national insurance due under ITEPA (including the Off-Payroll Rules) and the NICs legislation;
- 8.2.14. the Employment Business knows or suspects that the Umbrella Company does not or has failed to comply with ITEPA, the NICs Legislation, VAT legislation or the Companies Acts;
- 8.2.15. the Employment Business knows or suspects that either the Umbrella Company or the Agency Worker have breached the Data Protection Laws;
- 8.2.16. the Employment Business knows or suspects that the Umbrella Company does not or has failed to comply with its obligations under the Immigration, Asylum and Nationality Act 2006, the Safeguarding Legislation or any other employer obligations it may have towards the Agency Worker.

- 8.3. The Umbrella Company acknowledges that the continuation of an Assignment is subject to and conditioned by the continuation of the contract entered into between the Employment Business and the Hirer. If the contract between the Employment Business and the Hirer is terminated for any reason the Assignment shall end with immediate effect without liability to either the Umbrella Company or the Agency Worker, except in relation to time already worked and invoices [already submitted] and which remain unpaid at the date of termination.

9. INTELLECTUAL PROPERTY RIGHTS

The Umbrella Company acknowledges that all copyright, trademarks, patents and other intellectual property rights deriving from the Umbrella Company Services carried out by the Umbrella Company and the Agency Worker for the Hirer during the Assignment shall belong to the Hirer. Accordingly, the Umbrella Company shall (and shall procure that the Agency Worker shall) execute all documents and do all acts as the Employment Business shall require to give effect to its rights pursuant to this clause.

10. CONFIDENTIALITY

10.1. The Umbrella Company agrees on its own part and on behalf of the Agency Worker:

10.1.1. not at any time whether during or after an Assignment (unless expressly so authorised by the Hirer or the Employment Business as a necessary part of the performance of its duties) to disclose to any person or to make use of any of the trade secrets or the Confidential Information of the Hirer or the Employment Business with the exception of information already in the public domain;

10.1.2. to give the Hirer or the Employment Business (as directed) at the end of each Assignment all documents and other materials belonging to the Hirer (and all copies) which are in its possession including documents and other materials created by it or the Agency Worker during the course of the Assignment; and

10.1.3. not at any time to make any copy, abstract, summary or précis of the whole or any part of any document or other material belonging to the Hirer except when required to do so in the course of its duties under an Assignment in which case any such item shall belong to the Hirer or the Employment Business as appropriate.

10.2. The Umbrella Company will include the appropriate provisions in its terms with the Agency Worker to reflect the requirements of clause 11.1.

12. COMPUTER EQUIPMENT WARRANTY

The Umbrella Company shall ensure that any computer equipment and associated software that it gives the Agency Worker for the purpose of providing the Umbrella Company Services contains anti-virus protection with the latest released upgrade from time to time.

13. CONTRACT MONITORING AND AUDITS

13.1. The Employment Business reserves the right to audit the Umbrella Company on an ad hoc basis to ensure compliance with this Agreement and all statutory requirements in relation to all Agency Workers supplied to provide the Umbrella Company Services.

13.2. To help the Employment Business in its audit the Umbrella Company will:

13.2.1. keep such records as are necessary to comply with this Agreement and all statutory requirements in relation to all Agency Workers supplied to provide the Umbrella Company Services, and will give the Employment Business copies of those records on request; and

13.2.2. give the Employment Business access to its premises and original records relating to all Agency Workers supplied to provide the Umbrella Company Services.

13.3. If having conducted an audit, the Employment Business requires the Umbrella Company to take any action the Umbrella Company shall take such action within the period specified by the Employment Business. If the Umbrella Company does not take such action or correct the matter to the Employment Business's satisfaction, the Employment Business may terminate this Agreement in accordance with clause 9 (Term and Termination).

14. LIABILITY

14.1. The Umbrella Company shall:

14.1.1. be liable for any Losses or injury to any party resulting from breach of this Agreement or the deliberate and/or negligent acts or omissions of the Umbrella Company or Agency Worker during an Assignment; and

14.1.2. obtain adequate employer's liability insurance, public liability insurance, professional indemnity insurance and any other suitable policies of insurance in respect of the Umbrella Company or the Agency Worker. The Umbrella Company shall maintain such insurances for the duration of the Assignment and following termination of the Assignment for the period specified. The Umbrella Company shall give a copy of the policy to the Employment Business upon request.

15. INDEMNITY

The Umbrella Company shall indemnify and keep indemnified the Employment Business against any Losses suffered or incurred by the Employment Business by reason of any proceedings, claims or demands by the Agency Worker, the Hirer or any third party arising out of any non-compliance with, and/or as a result of, any breach of this Agreement including in particular, but not limited to ITEPA (including the Off-Payroll Rules), the NICs Legislation or the Data Protection Laws by either the Umbrella Company or the Agency Worker.

16. SEVERABILITY

If any competent authority determines that any of the provisions of this Agreement are 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. NOTICES

All notices which the parties must give under 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.

18. RIGHTS OF THIRD PARTIES

18.1. Except as set out in clause 18.2, none of the provisions of this Agreement are 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.

- 18.2. The Hirer shall be entitled to rely on and enforce the indemnities in clauses 3.11 (Relationship ...) and 15 (Indemnity) given by the Umbrella Company in favour of the Hirer, notwithstanding that the Hirer is not a party to this Agreement.

19. RESTRICTION

Where the Conduct Regulations do not apply: The Umbrella Company shall not (and shall ensure that the Agency Worker shall not) during the Assignment or for a period of 6 months following the termination of the Assignment supply the services of the Agency Worker directly, or through any other person, firm or Employment Business, to any Hirer for which s/he has carried out Assignments at any time during the previous 6 months except in the case of supply through an employment business with whom the Umbrella Company was also registered at the date of commencement of the last Assignment.

20. 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.

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SIGNATURES



Signed for and on behalf of the Employment Business

Peter Browne, Director

[print name here]

Signed for and on behalf of Apple Ltd. (the Umbrella Company)

[print name here]

I am authorised to sign this Agreement for and on behalf of the Umbrella Company.

Date

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Annex – Assignment Details

Details of the Umbrella Company and Agency Worker:	
Name, address and registered company number of the Umbrella Company:	Apple Limited of Nagasaki, registered company no. 20000
Name of the Agency Worker supplied by the Umbrella Company:	John Smith
Client's details:	
Name of the Client:	Accenture
Nature of the Client's business:	E.g. Architectural
Name of Client's contact to report to on arrival:	Mariana Wilson
Assignment details:	
Start date of the Assignment:	09/01/2018
Likely duration of the Assignment:	Development
Type of Work:	E.g. Architectural
Location of work:	Beverly Hills or Remote
Hours of work:	#Working_Hours#
The experience, training, qualifications and any authorisation necessary or required by law or a professional body:	None
(a) Any known health and safety risks and (b) the steps the Client has taken to reduce those risks:	None
Length of notice the Umbrella Company/ Agency Worker is required to give and entitled to receive if applicable	#Offer.NoticePeriod#
Pay:	
Actual rate of remuneration i.e. the rate to be paid for this Assignment:	50
Intervals of payment:	Weekly

Period of Extended Hire:

(only where the Conduct Regulations apply (i.e. the Umbrella Company and Agency Worker have not opted out of the Conduct Regulations)

Notice period required where Client wishes to engage the Umbrella Company/ Agency Worker for a Period of Extended Hire:

4 weeks

Period of Extended Hire if the Client wishes to engage the Umbrella Company/ Agency Worker and avoid paying a Transfer Fee:

52 weeks

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