



Terms of engagement with a personal service company (outside IR35 and not opted out of the conduct regulations)

4E - LTD - Outside IR35 - Opt In - mustard - June 2022

DRAFT

Contents:

The Parties

Recital

1. Definitions and interpretation
2. The Agreement
3. Relationship between the Employment Business, the PSC and the Client
4. Warranties provided by the PSC
5. The PSC's obligations
6. The Employment Business's obligations
7. Invoicing
8. PSC Fees
9. Term and Termination
10. Intellectual property rights
11. Confidentiality
12. Computer Equipment Warranty
13. Transfer fees
14. Contract monitoring and audits
15. Liability
16. Indemnity
17. Severability
18. Notices
19. Disclaimer
20. Third Party Rights
21. Governing Law and Jurisdiction

Signatures

Schedule - Assignment Details Form

THE PARTIES

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

DRAFT

RECITAL

The Employment Business has requested the PSC and the PSC has agreed to provide the services specified in the attached Assignment Details Form (“**the PSC Services**”) to the Client on the terms and 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:

“Assignment”	means the PSC Services to be performed by the PSC Staff for the Client for a period of time during which the PSC is engaged by the Employment Business to provide the PSC Services to the Client;
“Assignment Details Form”	means written confirmation of the Assignment details set out in the Schedule;
“AWR”	means the Agency Workers Regulations 2010;
“Client”	means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) requiring the PSC Services and identified in the attached Assignment Details Form;
“Companies Acts”	means the Companies Acts 1985, 1989 and 2006;
“Conditions of Liability”	means meets the requirements of section 50(1)(b) ITEPA and one of the conditions of liability set out in Sections 51 to 53 and 61N, 61O and 61P ITEPA;
“Conduct Regulations”	means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
“Confidential Information”	means any and all confidential commercial, financial, marketing, technical or other information or data of whatever nature relating to the Client 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 PSC or any third party in relation to the Assignment by the Client or the Employment Business or by a third party on behalf of the Client 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;
“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 PSC’s and/or the PSC Staff’s acceptance of the Client’s offer), the employment or use of the PSC and/or PSC Staff by the Client or by any third party to whom the PSC and/or any PSC Staff have been introduced by the Client, 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; and “Engage”, “Engages” and “Engaged” shall be construed accordingly;
“Exempt Organisation”	means an organisation which is exempt from the Off-Payroll Rules;
“Inside IR35”	means an Assignment which meets the requirements of Section 61M ITEPA;
“Intermediaries Legislation”	means Part 2, Chapter 8 ITEPA;
“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;
“Minimum Rate”	means (for the purposes of the Conduct Regulations) £[x per hour/day] being the minimum rate of pay that the Employment Business reasonably expects to achieve, for all hours worked by the PSC;
“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;
“Outside IR35”	means an Assignment which does not meet the requirements of Section 61M ITEPA;
“Period of Extended Hire”	means (for the purposes of the Conduct Regulations) any additional

period that the Client wishes the PSC to be supplied for beyond the duration of the original assignment or series of assignments as an alternative to paying a Transfer Fee;

- “PSC Fees”** means the fees set out in the Assignment Details Form. For the avoidance of doubt, the PSC Fees include the agreed fees for the PSC Services, any expenses or disbursements authorised by the Client and VAT charged at the applicable rate;
- “PSC Staff”** means the PSC’s employees, workers, officers, or representatives provided to perform the PSC Services (and, except where otherwise indicated, includes any substitute or any officer, employee, worker or representative of any third party to whom the provision of the PSC Services is assigned or sub-contracted with the prior agreement of the Client);
- “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 PSC worked for the Client having been supplied by the Employment Business; or (b) the period of 14 weeks commencing on the first day on which the PSC worked for the Client 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;
- “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 [or the Protecting Vulnerable Groups (Scotland) Act 2007 or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007];
- “Specified Intermediary”** means the party required to submit the report to HMRC to comply with the Reporting Requirements; and
- “Status Determination Statement”** means the written statement in which the Client confirms its decision on the application of the Off-Payroll Rules to the Assignment in accordance with Section 61T ITEPA;
- “Transfer Fee”** means (for the purposes of the Conduct Regulations) a fee payable by the Client to the Employment Business if the Client or any third party wishes to Engage the PSC;
- “Transparency Regulations”** means the Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015.
- “Type of Work”** means [insert the type of work you expect to supply the PSC into];

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 the 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 Assignment Details Form set out in the Schedule constitutes the entire agreement between the Employment Business and the PSC (“**the Agreement**”) for the supply of PSC Services to the Client and governs the Assignment undertaken by the PSC with the Client. This Agreement shall prevail over any terms put forward by the PSC.
- 2.2. During an Assignment the Employment Business will engage the PSC on a contract for services on these Terms. For the avoidance of doubt this Agreement shall not be construed as a contract of employment between any PSC Staff supplied to provide the PSC Services and either the Employment Business or the Client and any of the liabilities of an employer arising out of the Assignment shall be the liabilities of the PSC.
- 2.3. No variation or alteration to this Agreement shall be valid unless the variation is agreed between the Employment Business and the PSC and set out in writing, and a copy of the varied Agreement is given to the PSC no later than 5 business days following the day on which the variation was made stating the date on or after which the varied Agreement shall apply.
- 2.4. The Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973 [or in the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981]) (as amended) when introducing or supplying the PSC for Assignments with its Client.
- 2.5. The PSC and PSC Staff acknowledge that where they or any person to whom the performance of the PSC Services has been assigned or sub-contracted do not opt out of the Conduct Regulations, all of the Conduct Regulations will apply to the Agreement.
- 2.6. The Schedule shall specify the Client, the PSC Fees payable by the Employment Business and agreed expenses, any notice period and any other information relevant to the Assignment.

3. RELATIONSHIP BETWEEN THE EMPLOYMENT BUSINESS, THE PSC AND THE CLIENT

- 3.1. The Employment Business is not obliged to offer Assignments to the PSC and the PSC is not obliged to accept any Assignment. Both parties acknowledge that there is no intention to create mutuality of obligation during any Assignment or between Assignments and that this Agreement is a contract for services.
- 3.2. The PSC acknowledges that:
 - 3.2.1. the Client is not an Exempt Organisation;
 - 3.2.2. the Client has determined that the Assignment is an Outside IR35

Assignment;

- 3.2.3. its services are supplied to the Employment Business as an independent contractor and that accordingly, the responsibility of complying with all statutory and legal requirements relating to the PSC Staff (including but not limited to matters of taxation and compliance with the immigration laws applicable to the jurisdiction in which the PSC Services are provided) shall fall upon and be discharged wholly and exclusively by the PSC.
- 3.3. Nothing in this Agreement shall render any member of the PSC Staff an employee or worker of either the Employment Business or the Client. The PSC shall ensure that none of the PSC Staff holds themselves out as an employee or worker of either the Employment Business or the Client. If any person should seek to establish any liability or obligation upon the Employment Business on the grounds that they are an employee or worker of the Employment Business or the Client, the PSC shall upon demand indemnify the Employment Business and/or the Client and keep them indemnified in respect of any such liability or obligation and any related Losses which the Employment Business or Client shall incur.
- 3.4. The PSC acknowledges that no member of the PSC Staff is an agency worker as defined under the AWR and that the AWR do not apply in relation to this Assignment or any Assignment under this Agreement. The PSC shall indemnify and keep indemnified the Employment Business (or, as the case may be, the Client) against any Losses the Employment Business (or the Client) may suffer or incur as a result of any claim made by or on behalf of any member of the PSC Staff under the AWR.
- 3.5. The PSC shall provide the PSC Services and subject to the prior written agreement of the Client (which will not be unreasonably withheld or delayed) shall be entitled to send a substitute or to assign or sub-contract the performance of the PSC Services provided that the Employment Business 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 that the terms of any such substitution, assignment or sub-contract contain the same acknowledgements and obligations imposed by this Agreement. The PSC acknowledges that if it sends a substitute or assigns or sub-contracts the PSC Services, then the PSC may become the fee-payer for the purposes of the Off-Payroll Rules, but in any event, the PSC shall be solely responsible for paying the substitute, assignee or sub-contractor.
- 3.6. Except where otherwise stated in this Agreement, the PSC shall be entitled to supply its services to any third party during the term of this Agreement provided that this in no way conflicts with or is to the detriment of the supply of its services to the Client or amounts to a breach of this Agreement.
- 3.7. Neither the PSC nor the PSC Staff work under (or subject to the right of) supervision, direction or control by any person as to the manner in which they provide the PSC Services. Accordingly, the PSC shall be permitted to determine how it will provide the PSC Services and, subject to complying with any reasonable operational requirements of the Client, will have the flexibility to determine the number of hours required to provide, and the times during which it will provide, the PSC Services. The PSC can decide the location(s) where 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 that site.

4. WARRANTIES PROVIDED BY THE PSC

- 4.1. The PSC 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 it owes to any third party;
 - 4.1.2. the PSC Staff have the necessary skills and qualifications to perform the PSC Services;
 - 4.1.3. if applicable the PSC will provide the Employment Business with any information and any assistance it may require from the PSC to ensure that the Employment Business complies with its obligations under the Safeguarding Legislation;
 - 4.1.4. the PSC Staff meet the Conditions of Liability and will continue to meet the Conditions of Liability for the duration of the Assignment and this Agreement. The PSC will provide written confirmation to the Employment Business that the PSC Staff meet the Conditions of Liability;
 - 4.1.5. the PSC is a personal service company but it is not a “managed service company” as defined in either section 61B or section 339A of ITEPA and that it is compliant in all respects with ITEPA (including specifically the Intermediaries Legislation and the MSC Legislation) and the NICs Legislation;
 - 4.1.6. the PSC is incorporated in the UK and that all directors are resident in the UK for tax purposes;
 - 4.1.7. the PSC will pay the PSC Staff only into a nominated UK bank account in the PSC Staff’s name;
 - 4.1.8. all information the PSC provides to the Employment Business in order to comply with the Reporting Requirements and clauses 5.1.9 and 5.1.15 is complete and accurate;
 - 4.1.9. the PSC and the PSC Staff will comply with the Data Protection Laws.
- 4.2. The PSC warrants and shall procure that the PSC Staff, any sub-contractor or assignee performing the PSC Services warrant, that they are not and do not operate as “managed service companies” as defined in section 61B and section 339A of ITEPA but that they are personal service companies which are compliant in all respects with ITEPA (including specifically the Off-Payroll Rules and the MSC Legislation) and the NICs legislation.
- 4.3. Further to clause 3.7, the PSC warrants that the PSC Staff do not work under (or are not subject to the right of) supervision, direction or control of any person as to the manner in which they provide the PSC Services. The PSC further warrants that it shall advise the Employment Business in writing immediately that the PSC Staff work under (or subject to the right of) supervision, direction or control of any person.

5. THE PSC’S OBLIGATIONS

- 5.1. The PSC agrees on its own part and on behalf of the PSC Staff as follows:
 - 5.1.1. to observe any relevant rules and regulations of the Client’s establishment or the premises where the PSC Services are being performed to which attention has been drawn or which the PSC 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 PSC and the PSC

Staff;

- 5.1.2. to take all reasonable steps to safeguard its own safety, the safety of the PSC Staff and the safety of any other person who may be affected by actions of the PSC Staff whilst on the Assignment;
- 5.1.3. to comply with the Data Protection Laws in respect of any personal data which the PSC is granted access to for the purpose of or by reason of the performance of the PSC Services;
- 5.1.4. not at any time to divulge to any person, nor use for its own or any other person's benefit, any Confidential Information relating to the Client's or the Employment Business's employees, business affairs, transactions or finances;
- 5.1.5. not to engage in any conduct detrimental to the interests of the Employment Business and/or the Client which includes any conduct which could bring the Employment Business and/or the Client into disrepute and/or which results in the loss of custom or business for the Employment Business and/or the Client;
- 5.1.6. not to commit any act or omission constituting unlawful discrimination against or harassment of any member of the Employment Business's or the Client's staff;
- 5.1.7. if it sends a substitute, or assigns or sub-contracts any of the PSC Services to a third party, it will do so only in accordance with clause 3.5;
- 5.1.8. to give the Client and/or the Employment Business any progress reports as may be requested from time to time;
- 5.1.9. to notify the Employment Business forthwith in writing if it should become insolvent or if any of the circumstances set out in clauses 9.2.5 to 9.2.7 apply;
- 5.1.10. to give the Employment Business a copy of the terms under which the PSC has engaged the PSC Staff;
- 5.1.11. to comply with all relevant legal obligations, including but not limited to ITEPA, the NICs Legislation, VAT legislation and the Companies Acts and all statutory obligations;
- 5.1.12. not provide fraudulent information with the purpose of avoiding the Off payroll rules and 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;
- 5.1.13. to give the Employment Business all such information it may require 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;
- 5.1.14. to give the Employment Business on request, any information required to comply with Transparency Regulations;

- 5.1.15. at the Employment Business's request the PSC will complete a Key Information Document and will submit complete and accurate information to the Employment Business by the due date;
 - 5.1.16. to update the Employment Business promptly where any of the information required under clauses 5.1.9 to 5.1.15 changes;
 - 5.1.17. to provide at its own cost, subject to any agreement to the contrary specified in the Assignment Details Form all such necessary equipment as is reasonable for the adequate performance by the PSC of the PSC Services; and
 - 5.1.18. not enter into avoidance arrangements where the main purpose, or one of the main purposes, is to secure a tax advantage.
- 5.2. If the PSC is unsuitable or unable for any reason to provide the PSC Services during the course of the Assignment, the PSC should inform the Employment Business as soon as is reasonably practicable when it becomes aware of any event which renders it unable to provide the PSC Services so as to enable the Employment Business to discharge its obligations to the Client.
- 5.3. The PSC acknowledges that any breach of its obligations set out in this clause may cause the Employment Business to suffer Loss and that the Employment Business reserves the right to recover such Losses from the PSC by way of set off or deduction from any sums owed by the Employment Business to the PSC.

6. THE EMPLOYMENT BUSINESS'S OBLIGATIONS

- 6.1. Throughout the term of this Agreement the Employment Business will pay the PSC the PSC Fees in respect of the provision of the PSC Services in accordance with clause 8;
- 6.2. At the same time as an Assignment is offered to the PSC, the Employment Business shall give the PSC an Assignment Details Form setting out the following:
- 6.2.1. the identity of the client, and if applicable the nature of the 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 PSC would be required to provide the PSC Services;
 - 6.2.4. the PSC Fees and any expenses payable by or to the PSC;
 - 6.2.5. any risks to health and safety known to the Client in relation to the Assignment and the steps the Client 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 Client considers necessary or which are required by law to work in the Assignment.
- 6.3. Where the Employment Business does not give the information set out in clause 6.2 in writing (in

paper form or by electronic means), the Employment Business shall confirm it in writing by the end of the third business day (excluding Saturday, Sunday and any public or bank holiday) following except where:

6.3.1. The PSC is being offered an Assignment in the same position as one in which the PSC had previously been supplied within the previous 5 business days and such information has already been given to the PSC; 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 PSC and remains unchanged, the Employment Business needs only to provide written confirmation of the identity of the Client and the likely duration of the Assignment.

6.4. Where the Assignment extends beyond the intended 5 consecutive business day period, the Employment Business shall provide the information set out in clause 6.2 to the PSC in paper or electronic form within 8 days of the start of the Assignment.

7. INVOICING

7.1. Upon completion of the Assignment or as may be agreed and specified in the Assignment Details Form at the end of each week of the Assignment, the PSC shall send its invoice for the PSC Fees to the Employment Business, giving a detailed breakdown showing the work performed and the time spent by the PSC in providing the PSC Services.

7.2. For each of its invoices, the PSC shall obtain the signature of an authorised representative of the Client as confirmation that the PSC provided the PSC Services.

7.3. The PSC's invoice should be received by the Employment Business by no later than 17:00 on Wednesday following the week to which it relates. The PSC's invoice should bear the PSC's name, the name of the PSC Staff who provided the PSC Services to which the invoice relates, the PSC's company registration number and VAT number (if VAT registered) and should state any VAT due on the invoiced sum.

7.4. Where the PSC fails to submit a properly authenticated invoice the Employment Business shall, in a timely fashion, conduct further investigations into the hours claimed by the PSC and the reasons, if any, that the Client has refused to sign the invoice in respect of those hours. This may delay any payment due to the PSC. [see Note 28]

7.5. Subject to the PSC complying with the provisions of this clause 7, the Employment Business shall pay the for all hours worked regardless of whether the Employment Business has received payment from the Client for those hours. [see Note 28]

7.6. For the avoidance of doubt, the Employment Business will not pay the PSC for work not carried out.

8. PSC FEES

8.1. The PSC Fees shall be agreed prior to the start of the Assignment and specified in the Assignment Details Form. Subject to the receipt of the PSC's invoice in accordance with clause 7 above, and the PSC's compliance with this Agreement, the Employment Business will pay the PSC within 14 days of receipt of the PSC's invoice.

- 8.2. The Employment Business will pay the PSC Fees to the PSC and not to any third party or member of the PSC Staff or any substitute, sub-contractor or assignee. The Employment Business will pay the PSC Fees into a UK business bank account in the PSC's name, only.
- 8.3. As the Client has determined that the Assignment is an Outside IR35 Assignment, the PSC shall be responsible for compliance with the Intermediaries Legislation and the NICs Legislation and specifically for the payment of any PAYE income tax and national insurance contributions and any other taxes and deductions payable in respect of the PSC Staff for the provision of the PSC Services including any social fund contributions payable in any other Member State pursuant to a valid A1, E101 or E102 certificate issued to any of the PSC Staff.
- 8.4. The Employment Business shall not be obliged to pay the PSC for any periods during which the PSC does not provide the PSC Services, whether this is due to the PSC being unable to provide the PSC Services or where the Client does not require the PSC Services or otherwise in respect of holidays, illness or absence of the PSC Staff.
- 8.5. The PSC shall bear the cost of any training which the PSC Staff may require in order to perform the PSC Services.

9. TERM AND TERMINATION

- 9.1. Either of the Employment Business or the PSC may terminate the 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.
- 9.2. Notwithstanding clauses 9.1 and 9.3 of this Agreement, the Employment Business may without notice and without liability instruct the PSC to cease work on the Assignment at any time, where:
 - 9.2.1. the PSC or PSC Staff have acted in breach of the rules and regulations applicable to third parties providing services to the Client; or
 - 9.2.2. the PSC or PSC Staff have committed any serious or persistent breach of any of their obligations under this Agreement; or
 - 9.2.3. the Client reasonably believes that the PSC or PSC Staff have not observed any condition of confidentiality applicable to the PSC from time to time; or
 - 9.2.4. the Client is dissatisfied with the PSC's or the PSC Staff's provision of the PSC Services and has terminated the Assignment; or
 - 9.2.5. either the Client or the PSC 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
 - 9.2.6. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of either the Client or the PSC; or

- 9.2.7. an order is made for the winding up of either the Client or the PSC, or where either the Client or the PSC 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
- 9.2.8. any member of the PSC Staff is suspected of any fraud, dishonesty or serious misconduct; or
- 9.2.9. the Employment Business knows or suspects that the PSC has failed to give complete and accurate information for the purposes of the Key Information Document; or
- 9.2.10. the Client becomes an Exempt Organisation; or
- 9.2.11. the Client does not give a valid Status Determination Statement or does not respond to a request for further information about the Status Determination Statement from either the Employment Business or the PSC; or
- 9.2.12. the Client provides or seeks to provide a Status Determination Statement which incorrectly states that the Assignment is an Outside IR35 Assignment; or
- 9.2.13. the circumstances of the Assignment change so that the Assignment ceases to be an Outside IR35 Assignment and becomes an Inside IR35 Assignment; or
- 9.2.14. the Employment Business knows or suspects that the PSC or 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 and either of the Client or the PSC fails to provide accurate and sufficient evidence that neither the PSC nor 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; or
- 9.2.15. the Employment Business knows or suspects that any of the PSC Staff no longer meets the Conditions of Liability; or
- 9.2.16. the Employment Business suspects or has notice that the PSC has not complied with any of the requirements of the Intermediaries Legislation, the NICs Legislation or VAT requirements;
- 9.2.17. or the PSC is unable to perform the PSC Services for 2 days or more;
- 9.2.18. the PSC does not comply with clause 14.3; or
- 9.2.19. the Employment Business knows or suspects that either the PSC or the PSC Staff have breached the Data Protection Laws.
- 9.3. The PSC acknowledges that the continuation of the Assignment is subject to the continuation of the contract between the Employment Business and the Client. If the contract between the Employment Business and the Client is terminated for any reason the Assignment shall cease with immediate effect without liability to the PSC.
- 9.4. Failure by the PSC to give notice of termination as required in the Assignment Details Form attached shall constitute a breach of contract and shall entitle the Employment Business to claim damages from the PSC for any resulting Losses suffered by the Employment Business.

10. INTELLECTUAL PROPERTY RIGHTS

The PSC acknowledges that all copyright, trademarks, patents and other intellectual property rights deriving from the PSC Services carried out for the Client during the Assignment, by the PSC and the PSC Staff and any substitute or any third party to whom this Agreement is assigned or sub-contracted, shall belong to the Client, except such rights as may be expressly owned or retained by the PSC and set out in the Assignment Details Form. Accordingly, the PSC shall (and shall procure that any relevant member of the PSC Staff, and any substitute, sub-contractor or assignee) execute all such documents and do all such acts as the Employment Business shall from time to time require in order to give effect to its rights pursuant to this clause.

11. CONFIDENTIALITY

- 11.1. To protect the confidentiality and trade secrets of any Client and/or of the Employment Business without prejudice to every other duty to keep secret all information given to it or gained in confidence the PSC agrees on its own part and on behalf of the PSC Staff as follows:
- 11.1.1. not at any time whether during or after the Assignment (unless expressly so authorised by the Client 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 Confidential Information of the Client or the Employment Business with the exception of information already in the public domain;
 - 11.1.2. to deliver to the Client or the Employment Business (as directed) at the end of the Assignment all documents and other materials belonging to the Client (and all copies) which are in its possession including documents and other materials created by it or the PSC Staff during the course of the Assignment;
 - 11.1.3. not at any time to make any copy, extract or summary of the whole or any part of any document or other material belonging to the Client except when required to do so in the course of its duties under the Assignment in which event any such item shall belong to the Client or the Employment Business as appropriate.

12. COMPUTER EQUIPMENT WARRANTY

The PSC shall ensure that any computer equipment and associated software which it provides to the PSC Staff for the purpose of providing the PSC Services contains anti-virus protection with the latest released upgrade from time to time.

13. TRANSFER FEES

- 13.1. If before or during an Assignment or within the Relevant Period the Client wishes to Engage the PSC or any PSC Staff or contractor directly or through another employment business, the PSC acknowledges that the Employment Business will be entitled either to charge the Client a Transfer Fee or to agree to a Period of Extended Hire with the Client at the end of which the PSC or PSC Staff or the contractor (as appropriate) may be Engaged directly by the Client or through another employment business without further charge to the Client.

- 13.2. The PSC also acknowledges that the Employment Business will be entitled to charge the Client a Transfer Fee if the Client introduces the PSC or PSC Staff or any contractor to a third party, including a member of the Client's Group, who subsequently Engages the PSC or PSC Staff or any contractor, either directly or through another employment business, before or during an Assignment or during the Relevant Period).

14. CONTRACT MONITORING AND AUDITS

- 14.1. The Employment Business reserves the right to audit the PSC on an ad hoc basis to ensure compliance with this Agreement and all statutory requirements in relation to all PSC Staff supplied to provide the PSC Services including in particular but not limited to ITEPA and the NICs legislation.
- 14.2. To assist the Employment Business in its audit the PSC will:
- 14.2.1 maintain such records as are necessary to comply with this Agreement and all statutory requirements in relation to all PSC Staff supplied to provide the PSC Services, and will provide copies of the same to the Employment Business on request;
 - 14.2.2 provide the Employment Business with access to its premises and all records relating to all PSC Staff supplied to provide the PSC Services.
- 14.3. If having conducted an audit, the Employment Business requires the PSC to take any action, the PSC shall take such action within the time period specified by the Employment Business. If the PSC does not take such action or correct the matter to the Employment Business's satisfaction, the Employment Business can terminate this Agreement in accordance with clause 9 (Term and Termination).

15. LIABILITY

- 15.1. The PSC shall:
- 15.1.1. be liable for any and all Losses or injury to any party resulting from the deliberate and/or negligent acts or omissions of the PSC or PSC Staff during an Assignment, or for the acts or omissions of any substitute, assignee or sub-contractor to whom the PSC substitutes, assigns or sub-contracts the performance of the PSC Services, during an Assignment;
 - 15.1.2. obtain adequate employer's liability insurance, public liability insurance, professional indemnity insurance and any other suitable policies of insurance that is required from time to time as set out in the Assignment Details Form in respect of the PSC and the PSC Staff. The PSC shall maintain such insurances for the duration of the Assignment and following termination of the Assignment for the period specified. The PSC shall give a copy of the policy to the Employment Business upon request;
 - 15.1.3. be liable for any defects arising in relation to the PSC Services and shall correct at its own cost such defects as may be capable of remedy within a reasonable period from notification of such defects by either the Employment Business or the Client;
 - 15.1.4. be liable and for any breaches of the Data Protection Laws by the PSC or the PSC Staff.
- 15.2. For the avoidance of doubt, the Employment Business will not be liable to any of the PSC or the PSC Staff or any substitute, assignee or sub-contractor, for any Losses they may incur as a result of the

Client's Status Determination Statement (or replacement Status Determination Statement, if applicable).

16. INDEMNITY

Except to the extent any Losses result solely from any act or omission of the Employment Business or the Client, the PSC 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 any third party: (including specifically, but without limitation, HMRC and any successor, equivalent or related body pursuant to any of the provisions of ITEPA (including specifically the Intermediaries Legislation) or the NICs Legislation (and/or any supporting or consequential secondary legislation relating thereto), or arising out of any non-compliance with, and/or as a result of any breach of this Agreement or the Data Protection Laws by either the PSC or the PSC Staff.

17. 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.

18. 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.

19. DISCLAIMER

The Employment Business makes no representation nor does it accept any responsibility for ensuring that the terms of this contract are an accurate reflection of the relationship between the Client and the PSC. Furthermore, the Employment Business accepts no liability to indemnify the PSC for any Losses incurred by the PSC or the PSC Staff whether by reason of tax or other statutory or contractual liability to any third party arising from the Assignment.

20. RIGHTS OF THIRD PARTIES

- 20.1. Except as set out in clause 20.2, none of the provisions of this Agreement is intended to be for the benefit of or enforceable by third parties (other than permitted assignees who shall be entitled to enforce the provisions of this Agreement as if original parties to it) and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.
- 20.2. The Client shall be entitled to rely on and enforce the provisions of clause 3.4 and the indemnities given by the PSC in favour of the Client, notwithstanding that the Client is not a party to this Agreement.

21. GOVERNING LAW AND JURISDICTION

This Agreement shall be construed in accordance with the laws of England & Wales and all disputes, claims or proceedings between the parties relating to the validity, construction or performance of this Agreement shall be subject to the exclusive jurisdiction of the Courts of England & Wales.

DRAFT

SIGNATURES



Signed for and on behalf of the Employment Business

Peter Browne, Director

[print name here]

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

[print name here]

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

Date

DRAFT

Assignment details form – PSC

Details of the PSC and contractor:	
Name, address and registered company number of the PSC:	Apple Limited of Nagasaki, registered company no. 20000
VAT registration number of the PSC:	#VAT_No.# or N/A
Name of the Contractor supplied by the PSC:	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
Notice PSC must give and is entitled to receive to end the assignment if applicable	#Offer.NoticePeriod#
Pay:	
Actual rate of remuneration i.e. the rate to be paid for this Assignment:	£50
Intervals of payment:	Hourly
Period of Extended Hire:	
(only where the Conduct Regulations apply (i.e. the PSC and Contractor have not opted out of the Conduct Regulations))	

Notice period required where Client wishes to engage the PSC/ Contractor for a Period of Extended Hire:	4 weeks
Period of Extended Hire if the Client wishes to engage the PSC/ Contractor and avoid paying a Transfer Fee:	52 weeks

DRAFT