

This AGREEMENT is By and Between

Fivercast Ltd a company registered in the United Kingdom, registered number 13767199 and whose registered office is at 37 Vale Crescent, Tilehurst, Reading, RG30 6ED ("Company", "Fivercast Ltd" or "FIVERCAST")

And

("Client")

BACKGROUND

The company supply Agency Catering/Hospitality Worker to help our Clients with their Staffing Requirement. These are the Terms and Conditions which apply to all such transactions between the Company and the Client.

1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms the following definitions apply:

"Agency Workers Regulations" means the Agency Workers Regulations 2010;

"Assignment" means assignment services to be performed by the Agency Worker for the Client for a period of time during which the Agency Worker is supplied by FIVERCAST to work temporarily for and under the supervision and direction of the Client;

"Assignment Details Form" means written confirmation of the assignment details agreed with the Client prior to commencement of the Assignment;

"AWR Claim" means any complaint or claim to a tribunal or court made by or on behalf of the Agency Worker against the Client and/or FIVERCAST for any breach of the Agency Workers Regulations;

"Calendar Week" means any period of seven days starting with the same day as the first day of the First Assignment;

"Client's Group" means (a) any individual, company, partnership, statutory body or other entity which from time to time Controls the Client 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 Client, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006;

"Charges/Fees" means the hourly charges of FIVERCAST calculated in accordance with clause 6.1 and as may be varied from time to time in accordance with these Terms;

"Comparable Employee" means as defined in Schedule 1 to these Terms;

"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 FIVERCAST or their business or affairs (including but not limited to these Terms, 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 Agency Worker or any third party in relation to the Assignment by the Client or FIVERCAST whether before or after the date of these Terms 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, any applicable statutory or regulatory provisions and all European Directives and regulations in force from time to time relating to the protection and transfer of personal data;

“Engagement” means the engagement, employment or use of the Agency Worker by the Client to whom the Agency Worker has been introduced by the Client, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, and/or through a company of which the Agency Worker is an officer, employee or other representative, 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 Client 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 Client to work temporarily for and under the supervision and direction of the relevant Client);

means (i) the passing to the Client of a curriculum vitae or information which identifies the Agency Worker; or (ii) the Client’s interview of the Agency Worker (in person or by telephone or by any other means), following the Client’s instruction to FIVERCAST to supply a temporary worker; or (iii) the supply of the Agency Worker; and, in any case, which leads to an Engagement of the temporary worker or the Agency Worker; and “Introduced” and “Introducing” shall be construed accordingly;

“Introduction” means (i) the passing to the Client of a curriculum vitae or information which identifies the Agency Worker; or (ii) the Client’s interview of the Agency Worker (in person or by telephone or by any other means), following the Client’s instruction to FIVERCAST to supply a temporary worker; or (iii) the supply of the Agency Worker; and, in any case, which leads to an Engagement of the temporary worker or the Agency Worker; and “Introduced” and “Introducing” shall be construed accordingly;

“Agency Worker” - means the individual who is Introduced by FIVERCAST to provide services to the Client;

“Losses” means all losses, liabilities, damages, costs, expenses 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;

“Period of Extended Hire” means any additional period that the Client wishes the Agency Worker to be supplied for 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 Client to work temporarily for and under the supervision and direction of the relevant Client in the same role, and as further defined in Schedule 1 to these Terms;

“Relevant Terms and Conditions” means (a) the period of 8 weeks commencing on the day after the last day on which the Agency Worker worked for the Client having been supplied by FIVERCAST; or (b) the period of 14 weeks commencing on the first day on which the Agency Worker worked for the Hirer having been supplied FIVERCAST 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 Period” means any additional period that the Client wishes the Agency Worker to be supplied for beyond the duration of the original Assignment or series of Assignments as an alternative to paying a Transfer Fee;

“Remuneration” means as defined in Schedule 1 to these Terms; includes gross base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Agency Worker for services provided to or on behalf of the Client.

“Schedule” any Schedule to this Agreement shall be considered an integral part of it;

“Service provider” - Fivercast”

“Temporary Work Agency” means as defined in Schedule 1 to these Terms;

“Terms” 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 Client whether by collective agreement or otherwise and including (for the avoidance of doubt and without limitation) such terms and conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation.

“Transfer Fee” means the fee payable in accordance with clause 8 of these Terms and Regulation 10 of the Conduct Regulations; and

“Working Time Regulations” means the Working Time Regulations 1998.

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

1.3. The headings contained in these Terms 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 these Terms) and all subordinate legislation made (before or after these Terms) under it from time to time.

2. THE CONTRACT

2.1. These Terms constitute the contract between the Fivercast LTD (FIVERCAST) and the Client for the supply of the Agency Worker’s services by FIVERCAST to the Client and are deemed to be accepted by the by virtue of its request for, interview with or Engagement of the Agency Worker.

2.2. These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by FIVERCAST these Terms prevail over any terms of business put forward by the Client.

2.3. Subject to clause 6.2, no variation or alteration to these Terms shall be valid unless the details of such variation are agreed between FIVERCAST and the Client and are set out in writing and a copy of the varied Terms is given to the Client stating the date on or after which such varied Terms shall apply.

2.4. FIVERCAST shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973) when Introducing Agency Workers for Assignments with the Client.

3. CLIENT OBLIGATIONS

3.1. To enable FIVERCAST to comply with its obligations under the Conduct Regulations the Client undertakes to provide to FIVERCAST details of the position which the Client seeks to fill, including the following:

- 3.1.1. the type of work that the Agency Worker would be required to do;
 - 3.1.2. the location and hours of work;
 - 3.1.3. the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Agency Worker to possess in order to work in the position;
 - 3.1.4. any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
 - 3.1.5. the date the Client requires the Agency Worker to commence the Assignment;
 - 3.1.6. the duration or likely duration of the Assignment.
- 3.2. The Client will assist FIVERCAST in complying with their duties under the Working Time Regulations by supplying any relevant information about the Assignment requested by FIVERCAST and the Client will not do anything to cause FIVERCAST to be in breach of its obligations under these Regulations. If the Client requires the services of an Agency Worker for more than 48 hours in any week during the course of an Assignment, the Client must notify FIVERCAST of this requirement before the commencement of the Assignment or at the very latest, where this is not reasonably practicable, before the commencement of the week in which the Client requires the Agency Worker to work in excess of 48 hours.
- 3.3. The Client will comply with its obligations under Regulation 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.
- 3.4. To enable FIVERCAST to comply with its obligations under the Agency Workers Regulations, the Client undertakes as soon as possible prior to the commencement of each Assignment and during each Assignment (as appropriate) and at any time at the FIVERCAST's request:
- 3.4.1. to inform FIVERCAST of any Calendar Weeks since the commencement date in which the relevant Agency Worker has worked in the same or a similar role with the Client 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;
 - 3.4.2. provide FIVERCAST 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 Client as an employee or worker at the time the Qualifying Period commenced or with those of a Comparable Employee, such basic working and employment conditions being the Relevant Terms and Conditions;
 - 3.4.3. inform FIVERCAST in writing whether the Relevant Terms and Conditions provided are those of a hypothetical directly recruited employee or worker or those of a Comparable Employee;
 - 3.4.4. if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide FIVERCAST with a written explanation of the basis on which the Client considers that the relevant individual is a Comparable Employee; and
 - 3.4.5. inform FIVERCAST in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced; and
 - 3.4.6. save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to provide FIVERCAST with written details of its pay and benefits structures and appraisal processes and any variations of the same.
- 3.5. In addition, for the purpose of awarding any bonus to which the Agency Worker may be entitled under the Agency Workers Regulations, the Client will:
- 3.5.1. integrate the Agency Worker into its relevant performance appraisal system;
 - 3.5.2. assess the Agency Worker's performance;
 - 3.5.3. provide FIVERCAST with copies of all documentation relating to any appraisal of the Agency Worker, including without limitation written details of the outcome of any appraisal and the amount of any bonus awarded; and
 - 3.5.4. provide FIVERCAST with all other assistance they may request in connection with the assessment of the Agency Worker's performance for the purpose of awarding any bonus.
- 3.6. The Client will comply with all the FIVERCAST's requests for information and any other requirements to enable them to comply with the Agency Workers Regulations.
- 3.7. The Client warrants that:
- 3.7.1. all information and documentation supplied to FIVERCAST in accordance with clauses 3.4, 3.5 and 3.6 is complete, accurate and up-to-date; and

3.7.2. it will, during the term of the relevant Assignment, immediately inform the FIVERCAST in writing of any subsequent change in any information or documentation provided in accordance with clauses 3.4, 3.5 and 3.6;

3.8. Without prejudice to clauses 14.7 and 14.8, the Client shall inform FIVERCAST in writing of any:

3.8.1. oral or written complaint the Agency Worker makes to the Client which is or may be a complaint connected with rights under the Agency Workers Regulations; and

3.8.2. written request for information relating to the Relevant Terms and Conditions that the Client receives from the Agency Worker as soon as possible but no later than 7 calendar days from the day on which any such oral complaint is made to or written complaint or request is received by the Client and the Client will take such action and give such information and assistance as FIVERCAST may request, and within any timeframe requested by FIVERCAST in order to resolve any such complaint or to provide any such information in a written statement to the Agency Worker within 28 days of the Client's receipt of such a request in accordance with Regulation 16 of the Agency Workers Regulations and the Client will provide FIVERCAST with a copy of any such written statement.

3.9. The Client undertakes that it knows of no reason why it would be detrimental to the interests of the Agency Worker for the Agency Worker to fill the Assignment.

3.10. The Client shall provide such personal protective equipment and clothing (PPE) necessary to ensure the health, safety and welfare of the Agency Worker without charge to the Company or the Agency Worker. In the event the Company is required to provide such PPE the Company shall charge the Client for the cost of providing such PPE.

4. INFORMATION TO BE PROVIDED BY FIVERCAST TO THE CLIENT

4.1. When Introducing an Agency Worker to the Client FIVERCAST shall inform the Client

4.1.1. of the identity of the Agency Worker;

4.1.2. that the Agency Worker has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment;

4.1.3. that the Agency Worker is willing to work in the Assignment; and

4.1.4. the Charges.

4.2. The Client accepts that FIVERCAST may ask for specific details in order to create a job specification. FIVERCAST may later use this description to advertise job vacancies, through both online and offline media sources, to attract relevant Applicants.

5. TIMESHEETS

5.1. At the end of each week or month as agreed of an Assignment (or at the end of the Assignment where it is for a period of 1 week or less) the Client shall supply FIVERCAST' with a timesheet verifying the number of hours worked by the Agency Worker during that week.

5.2. Signature of the timesheet by the Client is confirmation of the number of hours worked. If the Client is unable to sign a timesheet produced for authentication by the Agency Worker because the Client disputes the hours claimed, the Client shall inform FIVERCAST as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with FIVERCAST to enable FIVERCAST to establish what hours, if any, were worked by the Agency Worker. Failure to sign the timesheet does not absolve the Client of its obligation to pay the Charges in respect of the hours worked.

5.3. The Client shall not be entitled to decline to provide a timesheet on the basis that it is dissatisfied with the work performed by the Agency Worker. In the event that the Client is dissatisfied with the Agency Worker the provisions of clause 10.1 below shall apply.

6. CHARGES

6.1. The Client agrees to pay the Fee's as notified to and agreed with the Client. The Charges are calculated according to the number of hours worked by the Agency Worker and comprise the following:

- 6.1.1. the Agency's hourly/weekly/monthly rate of pay, as agreed;
- 6.1.2. an amount equal to any paid holiday leave to which the Agency Worker is entitled under the Working Time Regulations and, where applicable, the Agency Workers Regulations and which is accrued during the course of an Assignment;
- 6.1.3. any other amounts to which the Agency Worker is entitled under the Agency Workers Regulations, where applicable;
- 6.1.4. Employer's National Insurance contributions; and
- 6.1.5. FIVERCAST' fees, as agreed.

6.2. FIVERCAST reserves the right to vary the Fees agreed with the Client, by giving written notice to the Client:

- 6.2.1. in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the Agency Workers Regulations; and/or
- 6.2.2. if there is any variation in the Relevant Terms and Conditions.

6.3. The fees are invoiced to the Client on a weekly or monthly basis, as agreed, and are payable within fourteen (14) days.

6.4. In addition to the Fee's, the Client will pay FIVERCAST an amount equal to any bonus that the Client awards to the Agency Worker in accordance with clause 3.5 immediately following any such award and FIVERCAST will pay any such bonus to the Agency Worker. For the avoidance of doubt, the Client will also pay any employer's National Insurance Contributions and FIVERCAST fees on the bonus (calculated using the same rate as that used under clause 6.1.6) in addition to any bonus payable to the Agency Worker.

6.5. FIVERCAST reserves the right to charge interest on invoiced amounts unpaid by the due date at the rate of 4% per annum above the base rate from time to time of the Bank of England from the due date of payment. Furthermore, FIVERCAST reserves the right to charge the Client administration costs, including but not limited to, issuing court proceedings arising from late payment.

6.6. No refunds are payable in respect of the Fees of FIVERCAST.

6.7. The Client's obligations under this clause 6 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.

7. PAYMENT OF THE AGENCY WORKER

7.1 FIVERCAST assumes responsibility for paying the Agency Worker and where appropriate, for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Agency Worker pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003.

8. THE AGENCY/TEMPORARY WORKERS OBLIGATION

8.1 The Agency worker(s) shall comply with all reasonable requests, instructions, or orders relating to the assignment.

8.2 Agency worker(s) shall comply with all health and safety, site, and security regulations applicable at the client location(s)

8.3 Agency staff shall not be undertaking any responsibility and duties even if they fall under Catering/Hospitality Worker' duties such as stock ordering, going to post office.

8.4 Client will be responsible for any sharp injuries that occurred to temporary staff.

9. TRANSFER FEES

9.1. The Client shall be liable to pay a Transfer Fee if the Client Engages a Agency Worker Introduced by FIVERCAST other than via FIVERCAST or introduces the Agency Worker to a third party and such introduction results in an Engagement of the Agency Worker by the third party other than via FIVERCAST and:

9.1.1. where the Agency Worker has been supplied by FIVERCAST such Engagement takes place during the Assignment or within the Relevant Period; or

9.1.2. where the Agency Worker has not been supplied, such Engagement takes place within six (6) months from the date of the Introduction to the Client. The Transfer Fee will be calculated in accordance with Schedule 2.

9.2. If the Client wishes to Engage the Agency Worker other than via FIVERCAST without liability to pay a Transfer Fee, the Client may, on giving one week's written notice to FIVERCAST engage the Agency Worker for the Period of Extended Hire specified in Schedule 2.

9.3. During such Period of Extended Hire FIVERCAST shall supply the Agency Worker on the same terms on which s/he has or would have been supplied during the Assignment and in any case on terms no less favourable than those terms which applied immediately before FIVERCAST received the notice in clause 8.2; and the Client shall continue to pay the Charges set out in clause 6. If FIVERCAST is unable to supply the Agency Worker for any reason outside its control for the whole or any part of the Period of Extended Hire; or the Client does not wish to hire the Agency Worker on the same terms as the Assignment; but the Agency Worker is Engaged by the Client, the Client shall pay the Transfer Fee, reduced pro-rata to reflect any Charges paid by the Client during any part of the Period of Extended Hire worked by the Agency Worker before being Engaged by the Client. If the Client fails to give notice of its intention to Engage the Agency Worker other than via FIVERCAST before such Engagement commences, the parties agree that the Transfer Fee shall be due in full.

9.4. Where prior to the commencement of the Client's Engagement other than via FIVERCAST, FIVERCAST and the Client agree that such Engagement will be on the basis of a fixed term of less than 12 months, FIVERCAST may, in its absolute discretion, reduce the Transfer Fee as calculated in accordance with Schedule 2 pro-rata. Such reduction is subject to the Client Engaging the Agency Worker for the agreed fixed term. Should the Client extend the Agency Worker's Engagement or re-Engage the Agency Worker within 12 months from the commencement of the initial Engagement FIVERCAST reserves the right to recover the balance of the Transfer Fee.

9.5. No refund of the Transfer Fee will be paid in the event that the Engagement of the Agency Worker other than via FIVERCAST by the Client or by a third party to which the Client introduces the Agency Worker terminates or terminates before the end of the fixed term referred to in clause 8.4.

10. SUITABILITY CHECKS AND INFORMATION TO BE PROVIDED IN SPECIAL SITUATIONS

10.1. Where:

10.1.1. the Agency Worker is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment, FIVERCAST will take all reasonably practicable steps to obtain and offer to provide to the Client copies of any relevant qualifications or authorisations of the Agency Worker.

11. UNSUITABILITY OF THE AGENCY WORKER

11.1. The Client undertakes to supervise the Agency Worker sufficiently to ensure the Client's satisfaction with the Agency Worker's standards of work. If the Client reasonably considers that the services of the Agency Worker are unsatisfactory, the Client may terminate the Assignment either by instructing the Agency Worker to leave the Assignment immediately, or by directing FIVERCAST to remove the Agency Worker. FIVERCAST may, in its absolute discretion, in such circumstances, reduce or cancel the Fee's for the time worked by that Agency Worker, provided that the Client has notified FIVERCAST immediately that they have asked the Agency Worker to leave the Assignment or the Assignment terminates:

11.1.1. within 24 hours of the Agency Worker commencing the Assignment where the Assignment is for more than One week; and provided that notification of the unsuitability of the Agency Worker is confirmed in writing to FIVERCAST within 48 hours of the termination of the Assignment.

11.2. The Client shall notify FIVERCAST immediately and without delay and in any event within twenty (24) hours if the Agency Worker fails to attend work or has notified the Client that they are unable to attend work for any reason.

12. BOOKING STAFF

12.1 All bookings are subject to acceptance and confirmation by Fivercast Ltd.

12.2 Fivercast do not charge a booking fee, except in the case of repeated cancellations See Clause 13.7 or in certain special cases were agreed with the Client.

12.3 All bookings will be charged a minimum of 6 hours of paid work (for example if only booked for 4 hours there will be a 6-hour charge).

12.4 The client wishing to send Agency worker home before their finishing time shall be charged until originally booked finishing time.

12.5 If you would like to take advantage of our minimum booking hour policy, the client must let us know while requesting a booking. Making changes on the day is not allowed unless otherwise agreed. If you keep our staff for more than the requested time shift and fail to inform us will be subject to an emergency charge on agreed rate.

12.6 When booking our Catering/hospitality Worker clients should allow at least fifteen (15) minutes of time at the beginning and end of the shift for our Staff to opening and closing.

13. BOOKING CANCELLATIONS

13.1 Clients wishing to cancel are requested to contact Fivercast as soon as possible.

13.2 Cancellations at less than twenty-four (24) hours' notices are subject to a fee equivalent to six (6) hours of work at the agreed hourly rate.

13.3 Cancellation on the same day is subject to the fee for the whole shift booked for the day deducting 60 minutes break.

13.4 If the booking is less than Six (6) hours, you will be charged the hours for the whole shift not deducting any lunchtime.

13.5 If you cancel the Catering/hospitality Worker on a Friday for the following Monday of the next week, you would still be charged the time for the full shift booked deducting sixty (60) minute break as per our agreed hourly rate.

13.6 For next day booking, once the booking is confirmed on the portal, over the phone or by email, the booking will be subject to late cancellation fee if you cancel.

13.7 Clients who book Fivercast and then cancel regularly shall be subject to additional cancellation fees, irrespective of the amount of notice given, and may be requested to pay a booking fee for future bookings.

14. TERMINATION OF THE ASSIGNMENT

14.1 Any of the Clients, FIVERCAST or the Agency Worker may terminate an Assignment at any time without prior notice and without liability (except in the case of termination by the Client, who shall be liable for any Fees' due under clause 6 above).

15. CONFIDENTIALITY AND DATA PROTECTION

15.1. All information relating to an Agency Worker is confidential and subject to the Data Protection Act 2018 and is provided solely for the purpose of providing work-finding services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the Data Protection Act 2018 in receiving and processing the data at all times.

15.2. FIVERCAST undertakes to keep confidential all Relevant Terms and Conditions that the Client discloses to FIVERCAST and not to use such information except for the purposes of compliance with the Agency Workers Regulations (including, for the avoidance of doubt and without limitation, when dealing with any request for information or complaint made by any Agency Worker or any AWR Claim)

15.3. Information relating to FIVERCAST's business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.

16. LIABILITY

16.1. Whilst reasonable efforts are made by FIVERCAST to give satisfaction to the Client by ensuring reasonable standards of skill, integrity and reliability from the Agency Worker and to provide the same in accordance with the Assignment details as provided by the Client, no liability is accepted by FIVERCAST for any loss, expense, damage or delay arising from any failure to provide any Agency Worker for all or part of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Agency Worker or if the Agency Worker terminates the Assignment for any reason. For the avoidance of doubt, FIVERCAST does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.

16.2. Agency Workers supplied by FIVERCAST pursuant to these Terms are engaged under contracts for services. They are not the employees of FIVERCAST but are deemed to be under the supervision and direction of the Client from the time they report to take up duties and for the duration of the Assignment.

16.3. The Client shall advise FIVERCAST of any special health and safety matters about which FIVERCAST is required to inform the Agency Worker and about any requirements imposed by law or by any professional body, which must be satisfied if the Agency Worker is to fill the Assignment.

16.4. The Client will also comply in all respects with all statutory provisions as are in force from time to time including, for the avoidance of doubt, but not limited to the Working Time Regulations, Health and Safety At Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999, by-laws, codes of practice and legal requirements to which the Client is ordinarily subject in respect of the Client's own staff (excluding the matters specifically mentioned in clause 7 above), including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Agency Worker during all Assignments.

16.5. The Client undertakes not to request the supply of an Agency Worker to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by a worker who has been transferred by the Client to perform the duties of a person on strike or taking official industrial action.

16.6. The Client shall indemnify and keep indemnified FIVERCAST against any Losses incurred by FIVERCAST arising out of any Assignment or arising out of any non-compliance with, and/or as a result of any breach of, these Terms by the Client.

16.7. The Client shall inform FIVERCAST in writing of any AWR Claim which comes to the notice of the Client as soon possible but no later than 7 calendar days from the day on which any such AWR Claim comes to the notice of the Client.

16.8. If the Agency Worker brings, or threatens to bring, any AWR Claim, the Client undertakes to take such action and give such information and assistance as FIVERCAST may request, and within any timeframe requested by FIVERCAST and at the Client'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.

17. NOTICES

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

18. SEVERABILITY

18.1 If any of the provisions of these Terms 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.

19. DISPUTE RESOLUTION

19.1. The Service Provider and the Client both acknowledge and agree that any dispute, claim or controversy arising out of or in connection with these terms or the breach, termination, enforcement, interpretation or validity thereof, or the use of the products and services (collectively 'Disputes') shall be submitted to arbitration.

19. 2. If the parties do not agree upon an arbitrator, either party may request a nomination from the chair of arbitration.

19.3. The Service Provider and the Client acknowledge and agree that should a dispute arise that an appointment of an officer from the Centre for Effective Dispute Resolution (CEDR) will be appointed and his/her recommendation will be adopted.

19.4 The Service Provider and the Client acknowledge and agree that each party retains the right to seek injunctive relief or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of the other party's copyrights, trade-marks, trade secrets, patents or other intellectual property rights.

19.5. Both parties agree that they are waiving their right to trial by jury or to participate as a plaintiffs or class expert in any purported class action or representative proceedings.

19.6. Unless otherwise agreed in writing by both parties the arbitrator may consolidate more than one person's claim and may not otherwise preside over any form of any class or representative proceedings.

19.7. If this specific paragraph is held un-enforceable, then the entirety of this 'Dispute Resolution' clause will be deemed void.

19.8. Except as provided in clause 19.4 this 'Dispute Resolution' section will survive any termination of these terms.

20. COUNTERPART AND ELECTRONIC SIGNATURE

12.1. This Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when executed and delivered shall be an original, but all the counterparts together shall continue on and shall be the same Agreement.

20.2. The Parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature. Without limitation an "Electronic Signature" shall include faxed versions of a regional signature, electronically scanned and transmitted versions of an original or any other electronic means

21. GOVERNING LAW AND JURISDICTION

21.1. These Terms are governed by the law of England & Wales and are subject to the exclusive jurisdiction of the Courts of England & Wales.

Company		Client	
Signature		Signature	
Company Name	Fivercast Ltd.	Company Name	
Name	Ganesh Ninglekhu Limbu	Company Address	
Designation	Managing Director	Contact Name	
Date	19/11/2022	Designation	
		Booking Email	
		Account Email	
		Date	

SCHEDULE 1:

"COMPARABLE EMPLOYEE",

"Comparable Employee" means as defined in Regulation 5(4) of the Agency Workers Regulations being an employee of the Client who:

- (a) works for and under the supervision of the Client 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 skill; and
- (b) works or is based at the same establishment as the Agency Worker or, where there is no comparable employee working or based at that establishment who satisfies the requirements of (a) above, works or is based at a different establishment and satisfies those requirements.

"QUALIFYING PERIOD"

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

- (a) the Agency Worker has started working during an assignment and there is a break, either between assignments or during an assignment, when the Agency Worker is not working;
- (b) the break is:
 - (i) for any reason and not more than six Calendar Weeks;
 - (ii) wholly due to the fact that the Agency Worker is incapable of working in consequence of sickness or injury and the break is 28 Calendar Weeks or less; paragraph (iii) does not apply; and, if required to do so by FIVERCAST, the Agency Worker has provided such written medical evidence as may reasonably be required;
 - (iii) related to pregnancy, childbirth or maternity and is at a time in a protected period, being a period beginning at the start of the pregnancy and ending at the end of the 26 weeks beginning with childbirth (being the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy) or, if earlier, when the Agency Worker returns to work;
 - (iv) wholly for the purpose of taking time off or leave, whether statutory or contractual, to which the Agency Worker is otherwise entitled which is:
 - i. ordinary, compulsory or additional maternity leave; ii. ordinary or additional adoption leave;
 - iii. ordinary or additional paternity leave;
 - iv. time off or other leave not listed in paragraphs (iv)i, ii, or iii above; or

v. for more than one of the reasons listed in paragraphs (iv)i, ii, iii to iv above;
(v) wholly due to the fact that the Agency Worker is required to attend at any place in pursuance to being summoned for service as a juror and the break is 28 Calendar Weeks or less;
(vi) wholly due to a temporary cessation in the Client's requirement for any worker to be present at the establishment and work in a particular role for a pre-determined period of time according to the established custom and practices of the Hirer;
(vii) wholly due to a strike, lock-out or other industrial action at the Client's establishment; or
(viii) wholly due to more than one of the reasons listed in paragraphs (ii), (iii), (iv), (v), (vi) or (vii); and
(c) the Agency Worker returns to work in the same role with the Client any weeks during which the Agency Worker worked for the Client 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 Client after the break. In addition, when calculating the number of weeks during which the Agency Worker has worked, where the Agency Worker has started working in a role during an Assignment and is unable to continue working for a reason described in paragraph (b)(iii) or (b)(iv)i., ii, or iii., for the period that is covered by one or more such reasons, the Agency Worker shall be deemed to be working in that role with the Client 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 prior to the first assignment does not count for the purposes of the definition of "Qualifying Period".

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 Clients. For the purpose of this definition, a "client" 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.

AND "TEMPORARY WORK AGENCY"

"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 or not operating for profit, and whether or not carrying on such activity in conjunction with others, of:

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

SCHEDULE 2: TRANSFER FEES

(a) The Transfer Fee referred to in Clause 8 shall be calculated as follows: 30% of the Remuneration payable to the Temporary Worker during the first twelve (12) months of the Engagement or, if the actual amount of the Remuneration is not known, the hourly charges set out in clause 6.1 above multiplied by 300.

(b) The Period of Extended Hire, referred to in Clause 8, before the Client Engages a Temporary Worker shall be twenty-six (26) weeks.