

## BRAINPOOL LTD

### TERMS AND CONDITIONS

#### 1. BACKGROUND

- 1.1 These terms and conditions tell you (the **Client**) the terms on which you may register with Brainpool, access our Platform, engage Brainpool as Consultants, or engage Data Scientists to undertake Assignments (capitalised words are terms that are defined in Appendix 3)
- 1.2 You are engaging with Brainpool Limited (**Brainpool**) a company incorporated and registered in England and Wales with company number 10024360 whose registered office is at 1c Downhills Park Road, London, United Kingdom, N17 6PE.
- 1.3 These terms and conditions constitute a legal agreement between you, the Client and us, Brainpool. By registering with us or accessing or using the Platform, by requesting us to act as your Consultants, or by requesting us to supply a Data Scientist to undertake an Assignment you agree to these terms and conditions. If you do not agree to these terms and conditions then you may not register with us, access or use the Platform or ask us to act as your Consultant or ask us to provide a Data Scientist to undertake an Assignment.
- 1.4 These terms and conditions apply to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.5 Information regarding the interpretation of these terms and conditions are set out in Appendix 3.

#### 2. SUPPLY OF SERVICES

- 2.1 Brainpool may be engaged on an Assignment for the Client as a Consultant for which, in addition to these terms and conditions, the terms set out in Appendix 1 shall apply, or it may be engaged to supply the services of a Data Scientist on an Assignment for which, in addition to these terms and conditions, the terms set out in Appendix 2 shall apply. The relevant Terms of Commitment shall also apply to this agreement as if set out here in full. Where a conflict arises these terms and conditions take precedence over the terms set out in the relevant Appendix but where a conflict arises the content of the Terms of Commitment supersede any terms and conditions set out herein and the terms set out in the relevant Appendix.
- 2.2 Where a Client has a potential Assignment, it shall provide the **Required Assignment Information** as relevant to the type and form of Assignment upon which it wishes to engage with Brainpool (examples of such information is set out in the relevant Appendix).

- 2.3 The parties recognise that the Required Assignment Information may not be finalised until, or after, to the Assessment Day, but the Client warrants that when it initially provides the Required Assignment Information, such information shall, as far as practicable, be accurate and complete.
- 2.4 Based on the information provided by the Client pursuant to clause 2.2 Brainpool will create a draft specification of the Assignment in collaboration with the Client.
- 2.5 If the Client wishes to proceed with an Assignment, it shall, as a condition of doing so, execute Terms of Commitment. Such Terms of Commitment shall reflect the agreed terms of the Assignment. If, at this stage, any of the Required Assignment Information differs from the Required Assignment Information provided pursuant to clause 2.2, the Client shall notify Brainpool of such differences prior to executing the Terms of Commitment.
- 2.6 Any change to, or extension of, the work set out in Terms of Commitment must be reflected in a new, or an amended Terms of Commitment.

### 3. CLIENT'S OBLIGATIONS

- 3.1 The Client shall:
- (a) ensure that all data that it supplies to Brainpool are complete and accurate;
  - (b) co-operate with Brainpool in all matters relating to the Assignment;
  - (c) provide Brainpool, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by Brainpool;
  - (d) provide Brainpool with such information and materials as Brainpool may reasonably require in order to execute and complete the Assignments, and ensure that such information is accurate in all material respects;
  - (e) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Assignment is to start;
  - (f) keep and maintain all materials, equipment, documents and other property of Brainpool (**Supplier Materials**) at the Client's premises in safe custody at its own risk, maintain Brainpool Materials in good condition until returned to Brainpool, and not dispose of or use Brainpool Materials other than in accordance with Brainpool's written instructions or authorisation;
  - (g) comply with any additional obligations notified to it by Brainpool from time to time.
- 3.2 If Brainpool's performance of any of its obligations during an Assignment is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- (a) Brainpool shall without limiting its other rights or remedies have the right to suspend performance of the Assignment until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays Brainpool's performance of any of its obligations;
- (b) Brainpool shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Brainpool's failure or delay to perform any of its obligations as set out in this clause 3.2; and
- (c) the Client shall reimburse Brainpool on written demand for any costs or losses sustained or incurred by Brainpool arising directly or indirectly from the Client Default.

#### 4. CHARGES AND PAYMENT

- 4.1 The basis for charging for each Assignment shall be set out in the Terms of Commitment and the method of calculation and payment of Assignment Fees are set out in the relevant Appendix 1 or Appendix 2.
- 4.2 Once Terms of Commitment have been executed in respect of an Assignment, but prior to (and as a condition of) commencement of the Assignment, the Client shall pay an initial fee of £500 (the **Commitment Fee**) in relation to that Assignment.
- 4.3 The following conditions apply to the Commitment Fee:
  - (a) if the Assignment is completed in accordance with these terms and conditions and the Terms of Commitment, the Commitment Fee shall be offset against the final invoice payable by the Client in connection with the Assignment;
  - (b) if the Client materially breaches, or otherwise materially fails to adhere to, the terms of the Terms of Commitment, Brainpool shall retain the Commitment Fee (without it being offset against any invoice payable by the Client).
- 4.4 All moneys due will be paid by the Client within 30 days of the date of invoice by Brainpool. Any breach of this clause 4.4 will entitle Brainpool to terminate (without liability) each and every co-existing Assignment between Brainpool and the defaulting Client pursuant to clause 7.4(a).
- 4.5 All amounts payable by the Client are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made by Brainpool to the Client, the Client shall, on receipt of a valid VAT invoice from Brainpool, pay to Brainpool such additional amounts in respect of VAT.
- 4.6 If the Client fails to make any payment due to Brainpool by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 4% per cent per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily

basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

- 4.7 The Client shall pay all amounts due in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Brainpool may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by Brainpool to the Client.
- 4.8 The Client shall not be entitled to any refund of or rebate in respect of Assignment Fees unless Brainpool determines otherwise in its absolute discretion.

## **5. INTELLECTUAL PROPERTY RIGHTS**

- 5.1 All Intellectual Property Rights in or arising out of or in connection with work done during an Assignment shall be owned by the Client. All Background Intellectual Property shall remain vested in Brainpool or its licensees but where applicable the Client shall be granted a free of charge, non-exclusive, non-transferable licence to use (but not to translate, adapt or amend) Background Intellectual Property for the purposes for which it was supplied.
- 5.2 Brainpool shall, at the cost and expense of the Client, execute all such documents and do all such acts as the Client may reasonable require from time to time in order to give effect to the ownership rights noted and licensed rights granted in this clause 5.
- 5.3 The Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on Brainpool obtaining a written licence from the relevant licensor on such terms as will entitle Brainpool to license such rights to the Client.

## **6. LIMITATION OF LIABILITY**

- 6.1 Nothing in the agreement shall limit or exclude Brainpool's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 6.2 Subject to clause 6.1, Brainpool shall not be liable to the Client, whether in agreement, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with any of its obligations set out in these terms and conditions and in relation to any Assignment for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or agreements;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of damage to goodwill; and
- (g) any indirect or consequential loss.

6.3 Subject to clause 6.1, Brainpool's total liability to the Client, whether in agreement, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with these terms and conditions and any Assignment shall be limited to the total amount of the Assignment Fee paid by the Client in relation to the Assignment to which the liability relates.

6.4 The Client shall protect, indemnify, defend and hold harmless Brainpool and any successor to Brainpool (and, to the extent required by Brainpool or any successor from time to time, its officers, agents, and employees) from and against any and all expenses, damages, claims (whether valid or invalid and whether deemed alleged or upheld), suits, losses, actions, judgments, liabilities, and costs whatsoever (including legal fees on a full indemnity basis) arising out of or in connection with:

- (a) any failure by the Client to comply with its obligations in respect of the Required Assignment Information.
- (b) any act, omission or default on the part of the Client, or any employee, officer or agent of the Client, including where such acts, omissions or defaults occur during the course of an Assignment or in respect of an Assignment or a potential Assignment.

6.5 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded.

6.6 This clause 6 shall survive termination of the agreement.

## **7. TERM AND TERMINATION**

7.1 This agreement shall commence on the date on which it has been executed by both parties and shall continue, unless terminated earlier in accordance with this clause 7, until either party gives to the other party three months' notice to terminate, expiring on or after the first anniversary of the date of commencement.

7.2 Without limiting its other rights or remedies, either party may terminate any Assignment by giving the other party one month's written notice. Provision has been made in Appendix 2

clause 3.2(c) for Brainpool to terminate an Assignment if it does not agree with a Dissatisfaction Notice, such termination shall be at its discretion, and without liability.

7.3 Without limiting its other rights or remedies, either party may terminate the agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to its obligations;
- (c) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (d) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (e) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under these terms and conditions has been placed in jeopardy.

7.4 Without limiting its other rights or remedies, Brainpool may terminate any Assignment with immediate effect by giving written notice to the Client if:

- (a) the Client fails to pay any amount due on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party (being an individual) dies or, by reason or illness or incapacity (whether mental or physical), is incapable of managing his own affairs, or becomes a patient under any mental health legislation; or
- (c) there is a change of Control of the Client.

7.5 Without limiting its other rights or remedies, Brainpool may suspend provision of the Services under the agreement or any other agreement between the Client and Brainpool if the Client becomes subject to any of the events listed in clause 7.3(c) to clause 7.3(e) or Brainpool reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this agreement on the due date for payment.

## 8. CONSEQUENCES OF TERMINATION

8.1 On termination of the agreement for any reason:

- (a) the Client shall immediately pay to Brainpool all of Brainpool's outstanding unpaid invoices and interest and, in respect of any Assignments part completed but for which no invoice has been submitted, Brainpool shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the Client shall return all of Brainpool Materials. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not permitted under these terms and conditions;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

8.2 On termination of this agreement every Assignment that has not already been individually terminated, or completed, shall also terminate with immediate effect.

## 9. GENERAL

9.1 **Announcements.** No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

9.2 **Force majeure.** Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

9.3 **Non-solicitation:** The parties agree that neither of them will either on their own account or in partnership or association with any person, firm, company or organisation, or otherwise and whether directly or indirectly during, or for a period of six months from the end of, the term of this agreement, solicit or entice away or attempt to entice away or authorise the taking of such action by any other person, any key executive of the other party who has worked on the services provided under this agreement at any time during the term of this agreement.

9.4 **Assignment and other dealings.**

- (a) Brainpool may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under this agreement and may subcontract or delegate in any manner any or all of its obligations under this agreement to any third party or agent.
- (b) The Client shall not, without the prior written consent of Brainpool, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under this agreement.

**9.5 Confidentiality.**

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 9.5(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the agreement. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 9.5; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the agreement.

**9.6 Entire agreement.**

- (a) This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- (c) Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- (d) Nothing in this clause shall limit or exclude any liability for fraud.

**9.7 Variation.** No variation of the agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).



9.8 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.

9.9 **Severance.** If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

9.10 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (ii) sent by fax to its main fax number;
  - (iii) sent by email to, in the case of Brainpool, [contact@brainpool.ai](mailto:contact@brainpool.ai) and, in the case of the Client, an email address which the Client has been using to communicate with Brainpool.
- (b) Any notice or communication shall be deemed to have been received:
  - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
  - (iii) if sent by fax, at 9.00 am on the next Business Day after transmission.
  - (iv) if sent by email, at the time of transmission.
- (c) This clause 9.10 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

9.11 **No partnership or agency:** Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

- 9.12 **Third parties.** No one other than a party to this agreement shall have any right to enforce any of its terms.
- 9.13 **Warranties:** Each party warrants that it has full capacity and authority to enter into and perform its obligations under this agreement.
- 9.14 **Governing law.** This agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 9.15 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the agreement or its subject matter or formation.

## APPENDIX 1

### 1. Acting as a Consultant

2. These supplemental terms apply to the supply of consultancy services by Brainpool to the Client.
3. Where you wish Brainpool to act as your consultants in relation to any Assignment you will provide the following information (Required Assignment Information):
  - a. Your legal identity and if applicable the nature of your business;
  - b. An outline of the work you would like Brainpool to undertake;
  - c. Any other relevant information that Brainpool reasonably request to enable it to submit a draft specification for the Assignment.
4. The parties agree to use their best endeavours to meet, or communicate in a manner agreed between them, and agree a specification in relation to each Assignment (the Assessment Day). Once the Assignment specification has been agreed it will be set down in writing by Brainpool as Terms of Commitment (in the form set out in Schedule 1, or Schedule 2, as the case may be). Once signed by the Client the parties agree that each Terms of Commitment sets out the full specification for the said Assignment. Any changes to the specification or any part thereof for any particular Assignment will be recorded in writing by Brainpool as a change to the relevant Terms of Commitment notice of which will be delivered to the Client by Brainpool.
5. Brainpool shall supply its services as a consultant to the Client in accordance with the agreement, this Appendix 1 and the Terms of Commitment in all material respects.
6. Any changes to the Terms of Commitment in relation to an agreed timetable or other deadlines will be communicated to the Client by Brainpool. Brainpool shall use all reasonable endeavours to meet any performance dates specified in the Terms of Commitment, but any such dates shall be estimates only and time shall not be of the essence for performance of the Assignment.
7. Brainpool shall have the right to make any changes to the Assignment which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the work done or deliverables supplied under the Assignment, and Brainpool shall notify the Client in any such event.
8. Brainpool warrants to the Client that the services supplied under each Assignment will be provided using reasonable care and skill.

9. Brainpool shall invoice the Client on completion of any phases outlined in the Terms of Commitment, or at its absolute discretion on completion of the Assignment.
  
10. The Client shall pay each invoice submitted by Brainpool:
  - a. within 30 days of the date of the invoice; and
  - b. in full and in cleared funds to a bank account nominated in writing by Brainpool, and
  
  - c. time for payment shall be of the essence of the agreement.

## APPENDIX 2

### 1. Acting as an Employment Business

These supplemental terms set out the agreement between Brainpool and the Client for the supply of Data Scientists by Brainpool to the Client. For the purposes of the Conduct Regulations 2003, Brainpool acts as an employment business in relation to the Introduction and supply of Data Scientists pursuant to this agreement.

### 2. Assignments

2.1 Where a Client has a potential Assignment, it shall provide the following information (the Required Assignment Information):

- a) its identity and if applicable the nature of its business
- b) the date on which the Client requires the Data Scientist to commence work and the duration, or likely duration, of the work;
- c) the position which the Client seeks to fill, including the type of work the Data Scientist in that position would be required to do, the location at which, and the hours during which, the Data Scientist would be required to work, and any risk to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
- d) the experience, training, qualifications and any authorisation which the Client considers are necessary, or which are required by law, or by any professional body, for the Data Scientist to possess in order to work in the position;
- e) any budget restrictions that the Client has and the proposed Rate of Pay;
- f) any expenses payable by or to the Data Scientist.

2.2 The parties recognise that the Required Assignment Information may not be finalised until, or after, to the Assessment Day, but the Client warrants that when it initially provides the Required Assignment Information, such information shall, as far as practicable, be accurate and complete.

2.3 Based on the information provided by the Client pursuant to clause 2.1 Brainpool will endeavour to introduce to the Client one or more Data Scientists to undertake the potential Assignment.

2.4 If the Client and a Data Scientist to whom the Client has been introduced wish, in principle, to proceed with an Assignment, the Client shall (unless each of Brainpool, the Data Scientist and the Client agree otherwise) attend a meeting with the Data Scientist (or engage with

Brainpool via an agreed form of remote communication) (the Assessment Day) to discuss and agree the following matters:

- a) the work to be undertaken during the Assignment;
- b) the Data Scientist's initial proposed methodology for completing the work (recognising that, if appropriate, the methodology may change during the course of the Assignment); and
- c) either the total number of Days' work, or the number of Days per week, which the Data Scientist will be required to work

2.5 If the Client wishes to proceed with an Assignment, it shall, as a condition of doing so, execute Terms of Commitment. Such Terms of Commitment shall reflect the terms agreed by the Data Scientist and the Client at the Assessment Day. If, at this stage, any of the Required Assignment Information differs from the Required Assignment Information provided pursuant to clause 2.1, the Client shall notify Brainpool and the Data Scientist of such differences prior to executing the Terms of Commitment.

2.6 Any change to, or extension of, the work set out in Terms of Commitment must be reflected in a new, or an amended Terms of Commitment.

2.7 The Client acknowledges that it shall be a matter solely for it to determine whether to offer a potential Assignment to the Data Scientists to whom it has been Introduced pursuant to clause 2.3.

### **3. Unsatisfactory Data Scientist**

3.1 If the Client, acting reasonably, decides that a Data Scientist is unsuitable to perform the Assignment (an Unsatisfactory Data Scientist), then the Client shall notify Brainpool in writing of that fact giving the grounds for its dissatisfaction with the Unsatisfactory Data Scientist (a Dissatisfaction Notice).

3.2 Within 7 (seven) days of receipt by Brainpool of a Dissatisfaction Notice, Brainpool will (provided the Client complied with its obligations under clause 2):

- a) provide a suitable replacement for the Unsatisfactory Data Scientist, in which case Assignment Fees will continue to be payable pursuant to clause 4.1; or
- b) if no such suitable replacement is available, inform the Client in writing of that fact, in which case no further Assignment Fees will apply in respect of the Unsatisfactory Data Scientist with effect from the date on which Brainpool receives the Dissatisfaction Notice; or
- c) if Brainpool disagrees with the grounds as set out in the Dissatisfaction Notice, it will inform the Client, in which case Brainpool may terminate the

Assignment. For the avoidance of doubt no rebate or refund of Commitment Fee or any Assignment Fees already paid will be, or shall become, due for repayment to the Client under these circumstances.

#### **4. Assignment Fees**

4.1 The Client will pay Assignment Fees to Brainpool in respect of Data Scientists. The formula for calculating the Assignment Fees including the applicable Rate of Pay, the Qualifying Period Rate of Pay together with any Other Qualifying Payments and Commission shall be set out in detail in the Terms of Commitment

4.2 The following conditions apply to the Assignment Fees:

a) they are calculated according to the number of complete Days worked by the Data Scientist;

b) the number of Days worked shall be determined by reference to the time sheet submitted by the Data Scientist to Brainpool after approval by the Client (or deemed approval where approval is not given within a reasonable time after submission).

4.3 Brainpool will invoice the Client in respect of the Assignment Fees at the end of each week (unless agreed otherwise in Terms of Commitment) when a Data Scientist has undertaken an Assignment on behalf of the Client.

4.4 In the event of any dispute as to the number of Days worked by a Data Scientist, the Client shall co-operate fully and in a timely fashion with Brainpool to enable Brainpool to establish what Days, if any, were worked by the Data Scientist during the applicable period.

4.5 The Client agrees that it shall not dispute the number of Days in a Data Scientist's time sheet on the basis that it is dissatisfied with the work performed by the Data Scientist. In cases of unsuitable or unsatisfactory work the provisions of clause 3 shall apply.

#### **5. Temporary to permanent**

5.1 If, following the Introduction or supply of a Data Scientist by Brainpool to the Client within the Relevant Period, the Client Engages the Data Scientist, the Client will pay Brainpool the Hiring Fee.

5.2 The Hiring Fee will not be payable if the Client gives written notice to Brainpool that it intends to continue the hire of the Data Scientist for a further period of twelve months (an Extended Assignment) before it Engages the Data Scientist other than through Brainpool.

5.3 Where the Data Scientist has previously undertaken an Assignment for the Client –

- a) the Assignment Fees payable by the Client during the Extended Assignment shall be those applicable immediately before Brainpool received the Client's notice of election; and
  - b) the Days of work per month during the Extended Assignment shall be deemed to be the greater of (i) the average number of Days of work undertaken during the Data Scientist's most recent Assignment for the Client and (ii) the number of Days per week actually worked by the Data Scientist during the Extended Assignment
- 5.4 Where there has been an Introduction of the Data Scientist but the Data Scientist has not undertaken any Assignments, the Assignment Fees payable by the Client during the Extended Assignment shall be calculated by reference to –
  - a) the Rate of Pay; and
  - b) such Days per week as the Data Scientist actually works during the Extended Assignment subject to a deemed minimum of one Day per week.
- 5.5 At the end of the Extended Assignment, the Client may Engage the Data Scientist without paying the Hiring Fee.
- 5.6 If the Client chooses an Extended Assignment, but engages the Data Scientist before the end of the Extended Assignment, the Hiring Fee may be charged by Brainpool, reduced proportionately to reflect the amount of the Extended Assignment paid for by the Client.
- 6. Compliance with AWR**
- 6.1 The Client shall at all times comply with its obligations under the AWR 2010, including but not limited to providing any Data Scientists with access to collective facilities and amenities and employment opportunities subject to and in accordance with regulation 12 and 13 of the AWR 2010.
- 6.2 Subject to clause 6.3 below, Brainpool shall use reasonable endeavours to comply with its obligations under the AWR 2010, including but not limited to in relation to providing any Qualifying Data Scientist with the Relevant Terms and Conditions in accordance with regulation 5.
- 6.3 The Client shall provide Brainpool in a timely manner with such information and other assistance as it requires to enable it to comply with its obligations pursuant to clause 6.2 above (including, but not limited to, providing full details of the Relevant Terms and Conditions where applicable).
- 6.4 In the event that either party receives an allegation by any Data Scientist that there has been a breach of the AWR 2010 in relation to the supply of that person to the Client by Brainpool



(whether that allegation has been made as a request for information under regulation 16 of the AWR 2010 or otherwise), it shall provide a copy of that allegation to the other party within seven days of receipt. The parties shall co-operate with each other in relation to responding to that allegation, which shall include supplying any information which may be reasonably requested by the other party, and complying with any reasonable requests in relation to the contents of any response.

**7. Additional obligations related to Assignments**

- 7.1 The Client undertakes to comply with all other obligations, duties and regulations (whether statutory or otherwise and without prejudice to the generality of the foregoing those relating to the place, nature or system of work) in any way arising from or directly or indirectly connected with the services rendered by a Data Scientist.
- 7.2 The Client agrees that to the extent that the Data Scientist shall be subject to supervision, direction and control with regard to the manner, time and place in which the Data Scientist carries out his work during the duration of the Assignment, these shall be matters solely for the Client (notwithstanding the fact that the Data Scientist is not in fact the Client's employee).
- 7.3 Where the Client requests the same in connection with an Assignment, Brainpool agrees that it shall (provided the same is recorded in the Terms of Commitment) not supply the Data Scientist to a Competitor during the course of the Assignment.
- 7.4 The Client shall protect, indemnify, defend and hold harmless Brainpool and any successor to Brainpool (and, to the extent required by Brainpool or any successor from time to time, its officers, agents, and employees) from and against any and all expenses, damages, claims (whether valid or invalid and whether deemed alleged or upheld), suits, losses, actions, judgments, liabilities, and costs whatsoever (including legal fees on a full indemnity basis) arising out of or in connection with:
- a) any failure by the Client to comply with its obligations under the AWR 2010 and/or under clause 6.3;
  - b) any act, omission or default on the part of the Client, or any employee, officer or agent of the Client, in respect of a Data Scientist, including where such acts, omissions or defaults occur during the course of an Assignment or in respect of an Assignment or a potential Assignment; and
  - c) any act, omission or default of a Data Scientist, whether wilful, reckless, fraudulent, negligent, dishonest or otherwise, during the course of an Assignment or otherwise in connection with or arising out of an Assignment.

### APPENDIX 3

THE FOLLOWING DEFINITIONS APPLY TO THIS AGREEMENT AND TO THE SCHEDULES AND APPENDICES:

#### Definitions:

<b>Assessment Day</b>	shall have the meaning given to it in appendix 1 clause 4 or Appendix 2 clause 2.4 as the case may be.
<b>Assignment:</b>	Either the provision of consultancy services to the Client by Brainpool or as the case may be the provision of temporary services by a Data Scientist to the Client.
<b>Assignment Fees:</b>	those sums payable by the Client to Brainpool pursuant to this agreement.
<b>AWR 2010:</b>	the Agency Workers Regulations 2010 ( <i>SI 2010/93</i> ).
<b>Background Intellectual Property</b>	Any Intellectual Property Rights owned or licensed to Brainpool vested in materials or information supplied under an Assignment which had been created or licensed prior to this agreement or prior to the commencement of the relevant Assignment (whichever is the later date).
<b>Business Day:</b>	a day other than a Saturday, Sunday or public holiday when banks in London are open for business.
<b>Client:</b>	the person, company or firm who engages Brainpool to supply Consultancy services or the services of a Data Scientist for an Assignment.
<b>Client Default:</b>	has the meaning set out in clause 3.2
<b>Commission</b>	an amount set out in the Terms of Commitment expressed as a % of the Rate of Pay or Qualifying Period Rate of Pay (as relevant) payable to the Data Scientist per Day under the relevant Assignment.
<b>Commitment Fee</b>	shall have the meaning given to it in clause 4.2.
<b>Competitor</b>	means a person or organisation which Brainpool and the Client (acting reasonably) agree materially competes with that part of the Client's business in which the Data Scientist was working.
<b>Conduct Regulations 2003:</b>	the Conduct of Employment Agencies and Employment Business Regulations 2003 ( <i>SI 2003/3319</i> ).
<b>Control:</b>	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression <b>change of Control</b> shall be construed accordingly.
<b>Data Scientist:</b>	a worker Introduced and/or supplied (as the context requires) by Brainpool to the Client to provide services to

	the Client.
<b>Day</b>	means a period of not less than 8 consecutive hours' work (subject to such lunch and other breaks as the Client allows or, if greater, as are required by law) undertaken during a calendar day in accordance with the Client's requirements as to when those hours must be worked.
<b>Dissatisfaction Notice</b>	has the meaning given to it in Appendix 2 clause 3.1.
<b>Engage:</b>	the employment of a Data Scientist or engagement directly or indirectly through any employment business other than through Brainpool (whether for a definite or indefinite period) as a direct result of any Introduction or Assignment to the Client and the terms <b>Engaged</b> or <b>Engagement</b> shall be construed accordingly.
<b>Extended Assignment:</b>	shall have the meaning set out in Appendix 2 clause 5.2.
<b>group:</b>	in relation to a company, that company, each and any subsidiary or holding company from time to time of that company, and each and any subsidiary from time to time of a holding company of that company.
<b>Hiring Fee:</b>	means the greater of (i) £50,000 and (ii) an amount equivalent to twelve months' Commission calculated by reference to the average number of Days per month worked by the Data Scientist for the Client during the preceding three months or, if shorter, during the duration of the Data Scientist's most recent Assignment for the Client.
<b>holding company:</b>	has the meaning given below.
<b>Intellectual Property Rights:</b>	patents, rights to inventions, copyright and related rights, moral rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.
<b>Introduce:</b>	the provision to the Client of information by Brainpool which identifies and/or describes the Data Scientist and <b>Introduction</b> and <b>Introduced</b> shall be construed accordingly.
<b>Other Qualifying Payments:</b>	any remuneration payable to the Data Scientist (other than their basic hourly rate), which is not excluded by virtue of regulation 6 of the AWR 2010, such as any overtime, shift premium, commission or any bonus, incentive or rewards which are directly attributable to the amount or quality of work done by a Data Scientist and are not linked to a

financial participation scheme (as defined by the AWR 2010).

<b>Platform:</b>	the internet-based platform operated by Brainpool pursuant to which Clients can provide details of potential Assignments.
<b>Qualifying Period Rate of Pay:</b>	the rate of pay that will be paid to the Data Scientist on completion of the Qualifying Period, if this rate is higher than the Rate of Pay. Such rate will be paid for each Day worked during an Assignment, subject to any deductions that Brainpool is required to make by law and to any deductions that the Data Scientist has specifically agreed can be made.
<b>Qualifying Data Scientist:</b>	any Data Scientist who at the relevant time is entitled to the rights conferred by regulation 5 of the AWR 2010 and in particular has been provided to the Client (whether by Brainpool or any third party) for the Qualifying Period.
<b>Qualifying Period:</b>	means the 12-week qualifying period as defined in regulation 7 of the AWR 2010, subject to regulations 8 and 9 of the AWR 2010.
<b>Rate of Pay</b>	the rate of pay that will be paid to the Data Scientist prior to completion of the Qualifying Period as specified in Terms of Commitment. The rate of pay will be paid weekly in arrears (unless agreed otherwise in Terms of Commitment).
<b>Relevant Period:</b>	shall have the meaning set out in regulation 10(5) and (6) of the Conduct Regulations 2003.
<b>Relevant Terms and Conditions:</b>	the relevant terms and conditions for any particular Qualifying Data Scientist as defined in regulation 6 of the AWR 2010.
<b>Required Assignment Information</b>	shall have the meanings given to it in Appendix 1 clause 3 and Appendix 2 clause 2.1 (as the case may be).
<b>subsidiary:</b>	has the meaning given below.
<b>Supplier Materials:</b>	has the meaning set out in clause 3.1(f).
<b>Terms of Commitment:</b>	a document to be signed by Brainpool and the Client confirming the terms of a particular Assignment, template forms for which are attached as Schedules 1 and 2 to this agreement.
<b>Unsatisfactory Data Scientist:</b>	has the meaning set out in Appendix 2 clause 3.1.
<b>VAT:</b>	value added tax chargeable under the Value Added Tax Act 1994.

- A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

- The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- A reference to **writing** or **written** includes fax and e-mail.
- Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- References to clauses are to the clauses of this agreement.
- Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.