

# TERMS & CONDITIONS

These Terms & Conditions (“the Terms”) shall apply to the provision of PayStream’s IR35 Services.

## 1. Purpose

The purpose of the IR35 Services is to provide the Contracting Party with an IR35 Report in which there is a Determination as to whether the Contractor falls inside or outside of Schedule 12 of the Finance Act 2000 (as amended) more commonly known and referred to in the Terms as IR35.

*It is important for the Contracting Party to note that the accuracy of the IR35 Report will depend upon the accuracy and detail of the information which is provided to PayStream for the purpose of making a Determination. Whilst each Determination is based upon the professional opinion of PayStream this may be challenged by HMRC.*

## 2. Definitions

The terminology used in the Terms shall unless stated otherwise have the following meaning:

**Agency:** an employment business or employment agency (as defined under the Employment Agencies Act 1973) through whom a Contractor is engaged to provide the Contractor Services;

**Client:** any third party who engages either directly with the Contractor or with an Agency for the provision of the Contractor Services;

**Confidential Information:** means any and all information (whether oral, written or in some other tangible or permanent form) disclosed by one party to the other party or that is otherwise obtained by the receiving party under or in connection with the Terms and that is marked as confidential or is by its nature is confidential;

**Commencement Date:** means the earlier of: i) the date on which the last of the parties signs the Terms; and ii) the date on which PayStream commences the IR35 Services;

**Contract Review:** a review of the contract(s) relating to the engagement of the Contractor for the purpose of providing the Contractor Services in accordance with clause 4.2.3 of the Terms;

**Contracting Party:** means any third party who contracts with PayStream by agreeing to the Terms for the IR35 Services (whether a Contractor, Agency or Client);

**Contractor:** a limited company or individual(s) who shall provide the Contractor Services to the Client whether directly or through an Agency;

**Contractor Services:** the work/tasks performed by the Contractor whilst on assignment with the Client provided either directly to the Client or through an Agency;

**Data Protection Legislation:** the UK General Data Protection Regulation (“UK GDPR”) and any national implementing laws, regulations and secondary legislation as amended or updated from time to time and/or any successor legislation to UK GDPR or the Data Protection Act 2018;

**Determination:** the written conclusion/summary reached by PayStream as to the IR35 Status attached to and forming part of the IR35 Report;

**Fee Payer:** the party which is lowest in the labour supply chain and who will be paying the Contractor, being either the Client or the Agency;

**Fees:** the fees outlined in clause 6.1 payable to PayStream for the IR35 Services;

**Initial Term:** means one year from the Commencement Date;

**Insolvency Event:** where a party (i) makes an arrangement with or enters into a compromise with its creditors; (ii) becomes the subject of a voluntary arrangement, receivership, administration (including the filing of any notice of an intention to appoint an administrator), liquidation or winding up; (iii) is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy; or (iv) is subject to any other similar process or event, whether in the United Kingdom or otherwise;

**IR35 Comply:** PayStream's online web portal via which the IR35 Services will be delivered to the Contracting Party;

**IR35 Report:** a report produced by PayStream for the Contracting Party setting out the findings of the Role Review and/or Placement Review and/or Contract Review together with a Determination;

**IR35 Services:** the services provided by PayStream for the purpose of review of the information provided by the Contracting Party and providing an IR35 Report (or series of IR35 Reports relating to different Contractor Services) as more particularly set out in clause 5 of the Terms;

**IR35 Status:** the tax status of the Contractor as to whether the Contractor falls inside or outside of IR35;

**IR35 Working Practices Form:** a questionnaire to be completed by the Contracting Party for the purpose of PayStream preparing an IR35 Report;

**PayStream:** means PayStream Accounting Services Limited (a Company registered in England and Wales with Company no 07598955) whose registered office is at Mansion House, Manchester Road, Altrincham, WA14 4RW;

**Placement Review:** a review based upon Working Practices undertaken by PayStream to ascertain IR35 status in accordance with clause 5.2.2 of the Terms;

**Request Submission:** the time at which the Contractor submits an IR35 Working Practices Form and or contracts in accordance with clause 3 of the Terms;

**Role Review:** a review based upon role title/description undertaken by PayStream to ascertain IR35 Status in accordance with clause 5.2.1 of the Terms;

**Working Day:** means Monday to Friday between the hours of 9.00am to 5.30pm except bank holidays;

**Working Practices:** the way in which the Contractor Services are provided and performed taking into account those matters as set out in the IR35 Working Practices Form.

### 3. Engagement of PayStream

**3.1** The Contracting Party shall, for the purpose of engaging PayStream to provide the IR35 Services, submit or, where applicable, arrange for the Contractor to submit a completed IR35 Working Practices Form and/or the contract(s) under which the Contractor will be engaged to carry out the Contractor Services at which time there shall be a legally binding contract between the parties.

## **4. Term and Termination**

**4.1** The Terms shall commence on the Commencement Date and shall continue for the Initial Term and thereafter until terminated in accordance with the Terms.

**4.2** The Contracting Party may terminate the Terms upon giving not less than two months' written notice to PayStream, such notice not to expire prior to the end of the Initial Term and subsequent anniversary thereafter. For the avoidance of doubt, this is an annual rolling agreement, unless terminated with two months' written notice served prior to each annual anniversary of the Commencement Date.

**4.3** PayStream shall be entitled to terminate the Terms upon giving the Contracting Party three months' written notice.

**4.4** The Contracting Party shall be entitled to terminate the Terms immediately, upon notice in writing to PayStream if:

**4.4.1** PayStream commits a material breach of the Terms which is irremediable; or, if such breach is remediable, fails to remedy that breach within fourteen (14) days of written notice requiring remediation; or

**4.4.2** PayStream suffers an Insolvency Event.

**4.5** PayStream shall be entitled to terminate the Terms immediately, upon notice in writing to the Contracting Party if:

**4.5.1** the Contracting Party commits a material breach of the Terms which is irremediable; or, if such breach is remediable, fails to remedy that breach within fourteen (14) days of written notice requiring remediation; or

**4.5.2** the Contracting Party suffers an Insolvency Event.

**4.5.3** any amount of the Fees is overdue by thirty (30) days or more.

**4.6** Upon termination of the Terms for any reason:

**4.6.1** The IR35 Services shall cease and the client shall immediately uninstall IR35 Comply;

**4.6.2** all sums payable to PayStream in respect of the IR35 Services shall immediately become due and PayStream shall be entitled to immediately submit an invoice in respect of all outstanding Fees; this shall include fair and reasonable compensation incurred to date for any part-completed IR35 Reports and the Platform Fee in respect of any submitted and completed IR35 Reports;

**4.6.3** at its own expense each party shall within thirty (30) days return to the other party or otherwise dispose of as the other party may instruct all Confidential Information of the other party in its possession which was provided in relation to the Terms.

**4.7** Upon the termination of the Terms for any reason, each party's rights, liabilities and obligations under the Terms shall cease, except that each party's rights, liabilities and obligations that have accrued prior to such termination or that are expressly or by implication intended to come into force upon or remain in force following such termination.

## **5. IR35 Services**

**5.1** PayStream shall use all reasonable skill and care in providing the IR35 Services for the purpose of producing an IR35 Report.

**5.2** PayStream shall for the purpose of preparing the IR35 Report undertake one or a combination of the following reviews as requested by the Contracting Party:

### **5.2.1 Role Review**

A high-level review of the role in which the Contractor will be engaged based on a job description/role and upon "assumed" Working Practices. Any Determination based on a Role Review will have limitations as to the accuracy of the Determination if a Placement Review is not completed.

### **5.2.2 Placement Review**

A review of the Contractor Services based upon actual Working Practices. This review may only be possible at such time as the Contractor has started an assignment with the Client and should be undertaken wherever possible prior to the Contractor receiving the first payment from the Fee Payer. If a Placement Review is carried out prior to the commencement of an assignment any Determination may be qualified and a further review may be necessary or appropriate post commencement of the assignment.

### **5.2.3 Contract Reviews**

A review of the contract between the Contractor and the Client or Agency, as applicable.

**5.3** The Contracting Party may select the type of IR35 Services required subject to the information which is made available to PayStream for the purposes of completing the services which have been selected. In the event sufficient information is not available at the time that the IR35 Review is requested, PayStream will recommend an alternative review or shall, at the request of the Contracting Party, complete the review but the IR35 Report shall be "qualified". If information is provided and/or the IR35 Working Practices Form is incomplete or the responses are inadequate it may not be possible for any Determination to be made.

**5.4** A review and IR35 Report shall be prepared and issued by PayStream after completion of an IR35 Working Practices Form and/or submission of a contract between the Contract or the Agency or Client (as relevant). PayStream will provide the IR35 Report as soon as reasonably practicable. The timescale within which the IR35 Report can be provided, will depend upon the provision of the information by the Contracting Party to PayStream and the prompt completion of the IR35 Working Practices Form and/or submission of the relevant contract. Failure to provide the relevant information or contract to PayStream or complete the IR35 Working Practices Form will result in a delay in producing the IR35 Report.

**5.5** For the avoidance of doubt, if only an IR35 Working Practices Form is submitted to PayStream (whether for the purpose of either a Placement Review or Role review) then that IR35 Working Practices Form will be reviewed by PayStream in isolation meaning that no contract between the Agency or Client and the Contractor will be taken into account by PayStream when completing its IR35 report and

Determination. Similarly, if only a contract is submitted to PayStream for the purposes of a Contract Review, then that contract will be reviewed in isolation and the IR35 Report and Determination shall not take into account the Contractor's actual Working Practices. PayStream will only review and take into account both the contract between the Contractor and the Agency or Client, and the Working Practices when producing its IR35 Report and Determination where i) both an IR35 Working Practices Form and a relevant contract are together provided to PayStream and ii) both a Placement or Role Review and a Contract Review is purchased. As outlined in clause 5.3, it is the responsibility of the Contracting Party to select the type of IR35 Services it requires and the Contracting Party accepts and acknowledges that any IR35 Report produced by PayStream will be based solely on the information provided to it, and the type of review(s) chosen to be purchased.

## 6. Fees

6.1 The Fees for the IR35 Services are as follows:

### **FEES FOR INDIVIDUAL REVIEWS PURCHASED BY CONTRACTORS:**

Contract Review  (Contract between the agency / client and limited company)	Placement Review
£250 + VAT	£150 + VAT

### **FEES FOR AGENCIES AND CLIENTS PURCHASING BULK REVIEWS:**

Price / tiered discount based on the volume of reviews made within each calendar year. For the avoidance of doubt, any discounts outlined below are only available where the Contracting Party is the Agency or Client:

Number of Reviews	Contract Review  (Contract between the agency / end client and the limited company)	Placement Review	Role Review
0 – 250	£250 + VAT	£150 + VAT	£150 + VAT
251 – 500	£250 + VAT	£140 + VAT	£140 + VAT
501 and above	£250 + VAT	£130 + VAT	£130 + VAT

### **ANNUAL PLATFORM FEE:**

The Fee is dependent upon the volume of reviews, not the type of reviews carried out.

Number of	Annual Fee
-----------	------------

Reviews	
Up to 100	£1000 + VAT
101 – 250	£2500 + VAT
251 - 500	£5000 + VAT
501 and above	£10,000 + VAT

- 6.2** By accepting the Terms, the Contracting Party agrees that the Contractor is responsible for payment of the Fees (save only where it has been agreed otherwise in writing between PayStream and the Contractor's Agency or Client for either the Agency or Client to pay for the IR35 Services instead). Where the Contractor is responsible for payment of the Fees, payment must be paid for via SagePay at the point of submission on IR35 Comply. If for any reason this is not possible then an invoice will be issued by PayStream to the Contractor and this invoice will be payable immediately.
- 6.3** Where it has been agreed between PayStream and the Agency or Client that the Agency or Client is responsible for payment of the Fees, then payment shall not be paid by the Contractor via SagePay and instead an invoice will be raised by PayStream to the Agency and/or Client as relevant, in which case the Fees will be payable within 30 days of the date of such invoice. Subject to clause 4.6.2, Fees shall be chargeable to the Agency or Client (as relevant) on completion of an IR35 Report. Where the IR35 Report has been issued to the Agency and/or Client for review (otherwise known as "sign off"), the Fee is chargeable at the point of PayStream completing the IR35 Report and submitting for sign-off.
- 6.4** In the event of late payment of any payment which becomes due under the Terms, PayStream shall be entitled to charge interest at 4% above base rate of HSBC plc as from the date of due payment until payment has been settled in full.
- 6.5** For the avoidance of doubt, the Fees shall be payable irrespective of the Determination which is made. No refunds will be made if the Contractor is deemed to be within IR35. PayStream shall at their absolute discretion provide a refund if there is inadequate information to make any Determination.
- 6.6** Where the fee structure applicable at clause 6.1 is incremental, PayStream will bill up front for the next increment at the point at which the previous threshold has been reached.

## **7. Use of the IR35 Report**

- 7.1** The IR35 Report is produced for the purpose of ascertaining the Contractor's IR35 Status. The IR35 Status will determine how the Contractor should be treated for tax purposes by the Fee Payer.

- 7.2** Unless otherwise instructed by the Contracting Party, PayStream may make available the IR35 report to the Fee Payer, the Contractor (if the Contractor is not the Contracting Party), the Client, the Agency or to such third party as requested by the Contracting Party.
- 7.3** The Determination made in the IR35 Report is based upon a subjective professional opinion which is based on the information supplied by the Contracting Party and/or the parties who are directly involved in the engagement of the Contractor for the purpose of providing the Contractor Services. The accuracy/correctness of such Determination will depend upon the quality of the information provided to PayStream and the responses provided to the questions in the IR35 Working Practices Form. The Contracting Party is not obliged to act upon the Determination but PayStream cannot be held responsible if the Determination of the IR35 Report is not followed.
- 7.4** If the Contracting Party considers that the Determination is incorrect, the Contracting Party may provide additional information to PayStream and/or identify any specific comments made by PayStream as set out in the IR35 Report which are inconsistent with the information provided. The Contracting Party must raise any challenge to the Determination within 2 Working Days of the receipt of the IR35 Report otherwise additional fees may be incurred.

## **8. Contracting Party Obligations**

- 8.1** The Contracting Party shall be responsible for providing (or procuring) the required information to PayStream so as to enable PayStream to prepare an IR35 Report including an unqualified Determination (wherever possible).
- 8.2** The Contracting Party warrants that to the very best of the Contracting Party's knowledge and belief, all information supplied (including all responses to the IR35 Working Practices Form) are true and accurate at the time the information is provided. If circumstances change or more detailed information becomes available, the Contracting Party must make such information available to PayStream as soon as practically possible and PayStream will at the Contracting Party's request, review such information. PayStream also recommend that IR35 Services are engaged every 6 – 12 months. Additional fees may be incurred if a more detailed review is required or a new review is requested.
- 8.3** The Contracting Party shall use all reasonable endeavours to ensure that the information to PayStream accurately reflects the Working Practices and shall ensure that any contracts which are provided for review are to the best of the Contracting Party's knowledge and belief in accordance with the Working Practices.
- 8.4** The Contracting Party acknowledges that if full and/or accurate information is not provided to PayStream, the Determination may be inaccurate and is likely to be "qualified" to the extent that the Determination could only be made based upon limited/incomplete information.

## **9. Liability and Insurance (your attention is drawn to this clause)**

- 9.1** PayStream shall not be liable to the Contracting Party in the event of any successful challenge by HMRC against a Determination under which the Contractor was deemed to be operating outside of IR35 save where it is established that such Determination could not be reasonably made based upon the information supplied to PayStream by or through the Contracting Party.

- 9.2** PayStream shall not be liable to the Contracting Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any consequential, indirect or economic losses, including any loss of revenue, profit, goodwill, anticipated savings or business opportunity howsoever arising from the provision of the IR35 Services.
- 9.3** The liability of PayStream for each IR35 Report (or series of reports where the report relates to the same Contractor Services with a Client) shall be limited to £5,000 (five thousand pounds) save in the event of any fraud on the part of PayStream in which circumstances liability shall be uncapped.
- 9.4** The Contracting Party agrees that it shall notify PayStream as soon as practicable of any potential claim that it may have in respect of PayStream's liability under the Terms and the Contracting Party shall take all reasonable steps to mitigate the value of any claim it may have against PayStream. PayStream shall not be liable to the Contracting Party under the Terms to the extent any loss results from any act or omission of the Contracting Party, the Client, Agency, Fee Payer or Contractor. Except in the event of death or personal injury caused by the negligence of PayStream, or where liability cannot be limited or excluded by law, PayStream's aggregate liability to the Contracting Party under or in connection with the Terms, whether contractual, tortious, statutory or otherwise, shall be limited to £50,000 (fifty thousand pounds). For the avoidance of doubt, the aggregate limit of £50,000 covers all IR35 Reports produced under or in connection with these Terms, as opposed to a per IR35 Report basis. PayStream shall not be liable for any uninsured loss, damage, costs or expenses of any nature, howsoever incurred or suffered by any person.
- 9.5** For the avoidance of any doubt, PayStream's liability for the provision of the IR35 Services shall be only to the Contracting Party and to no other third party whether or not they have placed any reliance on the IR35 Report produced by PayStream.
- 9.6** PayStream shall at all times maintain professional indemnity insurance of not less than £1,500,000.

## **10. Legal Compliance**

- 10.1** PayStream shall at all times act in accordance with current legislation.
- 10.2** Each IR35 Report shall be compiled and issued in accordance with the relevant laws, regulations and HMRC guidance as applicable upon the date on which the Determination is made.
- 10.3** PayStream shall at all times operate in accordance with MSC Legislation.

## **11. Confidentiality**

- 11.1** PayStream shall keep all information provided by or through the Contracting Party confidential save to the extent that it is necessary to share such information with the Contractor, Agency and/or Client for the purpose of providing the IR35 Services or where such information has been provided is already within the public domain.

## **12. Intellectual Property Rights**



**12.1** All Intellectual Property, including but not limited to the copyright in the forms and reports used by PayStream, for the purpose of delivering the IR35 Services shall remain the property of PayStream. The Contracting Party shall be entitled to copy reproduce and use the IR35 Report provided by PayStream as it sees fit to do but shall have no right to use copy or reproduce any forms, documents or reports used by PayStream unless the Contracting Party has obtained the prior written consent of PayStream.

## **13. Data Protection**

**13.1** PayStream and the Contracting Party shall at all times act in accordance with Data Protection Legislation.

**13.2** Unless agreed otherwise, PayStream will act in the capacity of a Data Processor for the Contracting Party.

**13.3** By submitting any Personal Data to PayStream, the Contracting Party agrees to PayStream's Collection, Use and Disclosure of all such data in accordance with this clause and PayStream's Privacy Policy. Where the Contracting Party is an Agency or Client, they will ensure that they have all the necessary appropriate consents and notices in place to enable the lawful transfer of the Personal Data to PayStream for the purpose of providing the IR35 Services.

**13.4** PayStream shall to the extent that it Processes any Personal Data belonging to the Contracting Party:

- (a) Process the Personal Data only for the purposes of providing the IR35 Services.
- (b) Maintain such appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidents or loss or disruption of or damage to Personal Data.
- (c) Ensure that all Personal Data is kept confidential.
- (d) Not transfer any Personal Data outside of the European Economic Area save with the prior written consent of the Contracting Party.
- (e) Comply with any reasonable request by the Contracting Party to amend, transfer or destroy the Personal Data or any parts of it save as otherwise required by Data Protection Legislation to restore the Personal Data.
- (f) Notify the Contracting Party in the event of any Personal Data breach.
- (g) Assist the Contracting Party at the Contracting Party's costs in responding to any request from a Data Subject and to ensure compliance with its obligations under the Data Protection Legislation with respect to security, breach, notifications, impact assessments and consultations with the supervisory authorities.
- (h) Maintain/complete/amend and hold accurate records and information to demonstrate compliance with this clause 13.

**13.5** The capitalised terms adopted in this clause shall have the meaning as set out in the Data Protection Legislation.

## **14. General**

### **14.1 Complaints or Disputes**

IR35v09.24

In the event of any dispute or complaint raised by the Contracting Party this should in the first instance be raised with the IR35 Team (IR35@paystream.co.uk). PayStream will use all reasonable endeavours to deal with the complaints/dispute within 10 Working Days.

#### **14.2 Notifications**

- (a) Any general notices or communications in accordance with the Terms may be sent by email and shall be deemed to have been received at the time the email was sent (if on a Working Day) subject to confirmation of receipt and if sent any time after 4.30pm on a Working Day shall be deemed to have been received at 9.30pm on the following Working Day.
- (b) Any legal proceedings must be sent by First Class Post and shall be deemed received 2 working days after posting. Service by email will not be accepted.

#### **14.3 Third Party Rights**

No party other than PayStream or the Contracting Party will have any rights under the Terms.

#### **14.4 Assignment**

PayStream may at any time assign or transfer any or all of its rights or obligations under the Terms. The Contracting Party may not assign or transfer any benefit in any IR35 Report to a third party save that the Agency and/or Client may do so for the benefit of the Contractor.

#### **14.5 No Partnership or Agency**

Nothing in the Terms is intended to or shall be deemed to constitute a partnership or joint venture of any kind between PayStream and the Contracting Party, nor constitute any party, the agent of another party, for any purpose. No party shall have authority to act the agent of another party in any way.

#### **14.6 Variation**

PayStream shall have the right to vary the Terms at any time save that such changes shall not apply to the provision of the IR35 Services or the preparation of an IR35 Report prior to such change being made.

#### **14.7 Entire Agreement**

The Terms together with the IR35 Working Practices Form and any documents referred to in the Terms and the Privacy Policy constitute the entire agreement between the parties and will supersede and extinguish any previous agreements, assurances, warranties and representations and any understandings between the parties, whether written or oral relating to the IR35 Services.

#### **14.8 Governing Law and Restriction**

Any dispute or claim arising out of or in connection with the provision of the IR35 Services shall be governed in accordance with English Law and the parties shall irrevocably submit to the exclusive jurisdiction of the Courts of England.