

## **CONTRACT FOR SERVICES FOR AGENCY WORKERS (TERMS OF ENGAGEMENT)**

### **1. DEFINITIONS**

1.1. In these Terms of Engagement the following definitions apply: –

#### **“Assignment”**

means the period during which the Agency Worker is supplied to render services to the Hirer;

#### **“Hirer”**

means the person, company or corporate body requiring the services of the Agency Worker together with a subsidiary or associated company as defined by the Companies Act 1985;

#### **“Employment Business”**

means Fylde Office Service Bureau Ltd, 28 Orchard Road, St Annes on Sea, Lancashire FY8 1PF

#### **“Agency Worker”**

means the person who has signed this Contract

#### **“Relevant Period”**

means the longer period of either 12 weeks from the <sup>1</sup>first day on which the Temporary Worker worked for the Client, or 8 weeks from the day after the Temporary Worker was last supplied by the Employment Business to the Client.

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

1.2 The headings contained in these Terms are for convenience only and do not affect their interpretation.

### **2. THE CONTRACT**

2.1. These Terms constitute a contract for services between the Employment Business and the Agency Worker and they govern all Assignments undertaken by the Agency Worker. However, no contract shall exist between the Employment Business and the Agency Worker between Assignments.

2.2. For the avoidance of doubt, these Terms shall not give rise to a contract of employment between the Employment Business and the Agency Worker or the Hirer and the Agency Worker. However, the Employment Business is required to make deductions from the Agency Worker’s pay in accordance with Clause 4.1. The Agency Worker is supplied as a worker, and is entitled to certain rights as such, but nothing in these terms shall be construed as giving the Agency Worker rights in addition to those provided by statute except where expressly stated.

2.3 No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Employment Business and the Agency Worker and set out in writing and a copy of the varied terms is given to the Agency Worker stating the date on or after which such varied terms shall apply.

### **3. ASSIGNMENTS**

3.1 The Employment Business will endeavour to obtain suitable Assignments for the Agency Worker to work in a clerical, secretarial or administrative capacity which matches their skills and experience. The Agency Worker shall not be obliged to accept an Assignment offered by the Employment Business.

3.2 The Agency Worker acknowledges that the nature of temporary work means that there may be periods when no suitable work is available and agrees: that the suitability of the work to be offered shall be determined solely by the Employment Business; that the Employment Business shall incur no liability to the Agency Worker should it fail to

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<sup>1</sup> The ‘first day’ will be the first occasion on which an Agency Worker is supplied to work for the Hirer or the first day of an Assignment where there has been more than 42 days since the end of any previous assignment

offer opportunities to work; and that no contract shall exist between the Agency Worker and the Employment Business during periods when the Agency Worker is not working on an Assignment.

3.3 At the same time as an Assignment is offered to the Agency Worker the Employment Business shall inform the Agency Worker of the identity of the Hirer, and if applicable the nature of their business; the date the work is to commence and the duration or likely duration of the work; the type of work, location and hours during which the Agency Worker would be required to work; the rate of remuneration that will be paid and any expenses payable by or to the Agency Worker; and any risks to health and safety known to the Hirer in relation to the Assignment and the steps the Hirer has taken to prevent or control such risks. In addition the Employment Business shall inform the Agency Worker what experience, training, qualifications and any authorisation required by law or a professional body the Hirer considers necessary or which are required by law to work in the Assignment.

3.4 Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any public holiday) following save where the Agency Worker is being offered an Assignment in the same position as one in which the Agency Worker had previously been supplied within the previous five business days and such information has already been given to the Agency Worker.

3.5 For the purpose of calculating the average number of weekly hours worked by the Agency Worker on an Assignment, the start date for the relevant averaging period under the Working Time Regulations shall be the date on which the Agency Worker commences the first Assignment.

3.6 If, before or during an Assignment, or within the Relevant Period the Hirer wishes to employ the Agency Worker direct or through another employment business, the Agency Worker acknowledges that the Employment Business will be entitled either to charge the Hirer a Transfer fee or agree a Period of Extended Hire at the end of which the Agency Worker may be engaged directly by the Hirer or through another employment business without further charge to the Hirer. In addition the Employment Business will be entitled to charge a fee to the Hirer if they introduce the Agency Worker to a third party who subsequently engages the Agency Worker within the Relevant Period.

#### **4. REMUNERATION**

4.1. The Employment Business shall pay to the Agency Worker remuneration calculated at a minimum hourly rate of no less than that stipulated in the Statutory Minimum Wage. The actual rate will be notified on a per Assignment basis, for each hour worked during an Assignment to be paid weekly in arrears, subject to deductions in respect of PAYE pursuant to Sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003 and Class 1 National Insurance Contributions and any other deductions which the Employment Business may be required by law to make.

4.2. Subject to any statutory entitlement under the relevant legislation, the Agency Worker is not entitled to receive payment from the Employment Business or Hirers for time not spent on Assignment, whether in respect of holidays, illness or absence for any other reason unless otherwise agreed.

#### **5. STATUTORY LEAVE**

5.1 For the purposes of calculating entitlement to paid annual leave pursuant to Working Time Regulations 2009 under this clause, holiday is accrued from the date that the Agency Worker starts their first Assignment. All entitlement to leave must be taken during the course of the Leave Year in which it is accrued (01 January – 31 December).

5.2 Under the WTR, the Agency Worker is entitled to 28 days paid leave per Leave Year (including 8 public holidays), and should be taken as paid leave. It is forbidden to make payment in lieu of holiday (within the statutory 28 days) that has not been taken at the end of the calendar year, nor can Agency Workers carry forward their entitlement from one holiday year to the next, unless they shall be prevented from doing so due to sickness.

5.3 The legislation does specify that the Hirer can request the worker to take their leave at a certain time within the year, provided notice is given.

5.4 Where an Agency Worker wishes to take paid leave during the course of an assignment he should notify the Employment Business and Hirer of the dates of his intended absence giving written notice of at least five full working days. If no notice is given, the leave will be treated as unpaid.

5.5 In certain circumstances the Employment Business may give counter-notice to the Agency Worker's request to postpone or reduce the amount of leave that the Agency Worker wishes to take and in such circumstances the

Employment Business will inform the Agency Worker in writing giving at least the same length of notice as the period of leave that has been requested.

5.6 Entitlement to payment for leave accrues in proportion to the amount of time worked by the Agency Worker on Assignment during the Leave Year. In the case of irregular hours, these will be accumulated and payment made on the average. Please note that overtime hours are not taken into account when calculating holiday entitlement.

5.7 In order for an Agency Worker to get paid for a public holiday which falls during an Assignment, they must have made this request in writing, as stated in Clause 5.4. If no notice is given, this day will be treated as unpaid leave. Those Agency Workers who have qualified under AWR will automatically receive payment for public holidays assuming they have accrued enough hours to cover the time off.

5.8 Where this contract is terminated by either party and a P45 is requested, the Agency Worker shall be entitled to payment in lieu of any untaken leave which has been accrued throughout the holiday year in accordance with Clause 5.6 above. If the Agency Worker is TUPE'd to another employment business in the same role; then the accrued holiday entitlement at that point becomes the responsibility of the new host agency.

## **6. SICKNESS ABSENCE**

6.1. The Agency Worker may be eligible for Statutory Sick Pay provided that he meets the relevant statutory criteria.

## **7. TIME SHEETS**

7.1. At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of one week or less or is completed before the end of a week) the Agency Worker shall deliver to the Employment Business a completed time sheet indicating the number of hours worked during the preceding week and signed by an authorised representative of the Hirer. This time sheet should be received by the Employment Business no later than 12pm Monday of the week following that worked.

7.2. Subject to clause 7.3 The Employment Business shall pay the Agency Worker for all hours worked regardless of whether the Employment Business has received payment from the Hirer for those hours.

7.3. Where the Agency Worker fails to submit a properly authenticated time sheet the Employment Business shall, in a timely fashion, conduct further investigations into the hours claimed by the Agency Worker and the reasons that the Hirer has refused to sign a timesheet in respect of those hours. This may delay any payment due to the Agency Worker. The Employment Business shall make no payment to the Agency Worker for hours not worked.

7.4. For the avoidance of doubt and for the purposes of the WTR, the Agency Worker's working time shall only consist of those periods during which he is carrying out activities or duties for the Hirer as part of the Assignment. Time spent travelling to the Hirer's premises; lunch breaks and other rest breaks shall not count as part of the Agency Worker's working time for these purposes.

## **8. CONDUCT OF ASSIGNMENTS**

8.1 The Agency Worker is not obliged to accept any Assignment offered by the Employment Business but if he does so, during every Assignment and afterwards where appropriate, he will: –

- a) Cooperate with the Hirer's reasonable instructions and accept the direction, supervision and control of any responsible person in the Hirer's organisation;
- b) Observe any relevant rules and regulations of the Hirer's establishment (including normal hours of work) to which attention has been drawn or which the Agency Worker might reasonably be expected to ascertain;
- c) Take all reasonable steps to safeguard his or her own health and safety and that of any other person who may be present or be affected by his or her actions on the Assignment and comply with the Health and Safety policies and procedures of the Hirer;
- d) Not engage in any conduct detrimental to the interests of the Employment Business and/or Hirer which includes any conduct which could bring the Employment Business and/or the Hirer into disrepute and/or which results in the loss of custom or business by either the Employment Business or the Hirer (this includes references made in relation to an Assignment on any social networking site);

e) Not commit any act or omission constituting unlawful discrimination against or harassment of any member of the Employment Business' or Hirer's staff;

f) Not at any time divulge to any person, nor use for his or her own or any other person's benefit, any confidential information relating to the Hirer's or the Employment Business' employees, business affairs, transactions, finances, or clients.

g) On completion or termination of the Assignment or at any time when requested by the Hirer or the Employment Business, return to the Hirer or where appropriate, to the Employment Business, any property or items provided the Agency Worker in connection with or for the purpose of the Assignment, including, but not limited to any equipment, materials, documents, swipe cards or ID cards etc.

8.2 If the Agency Worker is unable for any reason to attend work during the course of an Assignment he should inform the Hirer and the Employment Business within one hour of the commencement of the Assignment or shift.

8.3 If, either before or during the course of an Assignment, the Agency Worker becomes aware of any reason why he may not be suitable for an Assignment, he shall notify the Employment Business without delay.

## **9. AGENCY WORKERS REGULATIONS**

9.1 All Agency Workers have access to Day One rights from the start of their assignment. It is the responsibility of the Hirer to ensure that Agency Workers are aware of these rights which include information regarding internal vacancies, and access to collective on-site facilities.

9.2 Following the AWR 12-week Qualifying Period within an assignment with the same Hirer, all Agency Workers are then entitled to receive equal treatment in terms of the certain working and employment conditions as those doing a comparable job role who are employed directly by the Hirer.

9.3 The Regulations do not alter an Agency Worker's employment status, and the definition remains the same as in Clause 2.2.

9.4 Before an Assignment is due to commence, the Agency Worker must inform the Employment Business if, since the 01 October 2011 he has worked for the same Hirer previously, giving full details of this previous work, so that Employment Business can determine the Qualifying Period within the regulations.

9.5 The Agency Worker will comply with any requirements of the Employment Business and/or the Hirer relating to the assessment of the Agency Worker's Qualifying Period within the Regulations.

## **10. TERMINATION**

10.1. The Employment Business or the Hirer may terminate the Agency Worker's Assignment at any time without prior notice or liability.

10.2. The Agency Worker may terminate an Assignment at any time without prior notice or liability but is requested to try and give one week notice to enable a replacement to be found.

10.3. If the Agency Worker does not inform the Hirer or the Employment Business (in accordance with clause 8.2) should they be unable to attend work during the course of an assignment this will be treated as termination of the assignment by the Agency Worker in accordance with clause 10.2 unless the Agency Worker can show that exceptional circumstances prevented him or her from complying with clause 8.2.

10.4. If the Agency Worker is absent during the course of an assignment and the contract has not been otherwise terminated under clauses 10.1, 10.2 or 10.3 above, the Employment Business will be entitled to terminate the contract in accordance with clause 10.1 if the work to which the absent worker was assigned is no longer available for the Agency Worker.

## **11. LAW**

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