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# QUICKTEMP

## CLIENT – PROVISION OF TEMPORARY STAFF

(EXCL PSC'S) TERMS & CONDITIONS

**Galago House, 163 Brighton Road, Coulsdon, CR5 2YH**  
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# CLIENT TERMS & CONDITIONS – 1ST OCTOBER 2021

## QUICKTEMP TERMS OF BUSINESS FOR THE PROVISION OF TEMPORARY STAFF IN THE COURSE OF EMPLOYMENT BUSINESSNO PSC'S

### 1. DEFINITIONS

In these Terms of Business the following definitions apply:

**Affiliate**

Means in relation to the Client, any subsidiary or holding company of the Client or any subsidiary of any such holding company;

**Agency Worker**

Means (for the purposes of AWR) a Temporary Resource who meets the definition of Agency Worker as set out in Regulation 3 of the AWR;

**Apprenticeship Levy**

Means the apprenticeship levy due in accordance with the Finance Act 2017 and the Income Tax (Pay as you Earn) (Amendment) Regulations 2017;

**Assignment**

Means each period during which the Temporary Resource is supplied to render services to a Client;

**Assignment Details Form**

Means the assignment details set out in writing;

**Assignment Services**

Means the services to be provided or the Specified Deliverables to be delivered by the Temporary Resource;

**AWR**

Means the Agency Workers Regulations 2010;

**AWR Claim**

Means any complaint or claim to a tribunal or court made by or on behalf of the Agency Worker against the Client and/or the Employment Business for any breach of the Agency Workers Regulations;

**Calendar Weeks**

Means any period of seven days starting with the same day as the first day of the First Assignment;

**Charges**

Means the charges as notified to the Client before an Assignment starts and which may be varied by the Employment Business from time to time during the Assignment;

**Client**

Means the person, firm or corporate body together with any Affiliate to whom the Temporary Resource is supplied or introduced;

**Comparable Employee**

Has the meaning given in the Agency Workers Regulations;

**Conditions of Liability**

Means meets the requirements of section 50(1)(b) ITEPA and one of the conditions of liability set out in Sections 51 to 53 and 61N, 61O and 61P ITEPA;

**Conduct Regulations**

Means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 and/or the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005;

**Control**

Means

- (a) The legal or beneficial ownership, directly or indirectly, of more than 50% of the issued share capital or similar right of ownership; or
- (b) The power to direct or cause the direction of the affairs and/or general management of the company, partnership, statutory body or other entity in question, whether through the ownership of voting capital, by contract or otherwise, and "Controls" and "Controlled" shall be construed accordingly;

**Data Protection Laws**

Means the Data Protection Act 2018, the UK GDPR (as defined in the Data Protection Act 2018) and any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data;

**Employment Business**

Means Quicktemp Limited, registration number 08354551, whose registered office is at Galago House, 163 Brighton Road, Coulsdon, CR5 2YH;

**Engagement**

Means the engagement (including a Temporary Resource's acceptance of the Client's offer), the employment or use of a Temporary Resource, by the Client or by any third party to whom the Temporary Resource has been introduced by the Client, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, an agency, licence, franchise or partnership arrangement, or any other engagement; and "Engage", "Engages" and "Engaged" shall be construed accordingly;

**First Assignment**

Means:

- (a) The relevant Assignment; or
- (b) If, prior to the relevant Assignment:
  - (i) A Temporary Resource has worked in any assignment in the same role with the relevant Client as the role in which the Temporary Resource works in the relevant Assignment; and
  - (ii) The relevant Qualifying Period commenced in any such assignment, that assignment (an assignment being (for the purpose of this defined term) a period of time during which the Temporary Resource is supplied by one or more Temporary Work Agencies to the relevant Client to work temporarily for and under the supervision and direction of the relevant Client;

**Intermediary**

Means any entity (other than the Employment Business) through which a Temporary Resource provides their services including (and, except where otherwise indicated, includes Intermediary Staff and any third party to whom the provision of the Assignment Services is assigned or sub-contracted in accordance with Clause 2.6);

**Intermediary Fees**

Means the fees payable to an Intermediary for the provision of the Assignment Services;

**Intermediary Staff**

Means any officer, employee, worker or representative of an Intermediary supplied to provide the Assignment Services (and, except where otherwise indicated, includes any officer, employee, worker or representative of any third party to whom the provision of the Assignment Services is assigned or sub-contracted in accordance with Clause 2.6);

**Introduction Date**

The date the Employment Business Introduced the Temporary Resource to the Client;

**Introduction**

Means (i) the passing to the Client of a curriculum vitae or information which identifies a Temporary Resource or (ii) the Client's interview of or meeting with a Temporary Resource (in person, by telephone or by any other means), following the Client's instruction to the Employment Business to supply a Temporary Resource; or (iii) the supply of a Temporary Resource; which leads to an Engagement of that Temporary Resource; and "Introduces" and "Introduced" shall be construed accordingly;

**ITEPA**

Means the Income Tax (Earnings and Pensions) Act 2003;

**NICs Legislation**

Means the Social Security (Categorisation of Earners) Regulations 1978 the Social Security (Categorisation of Earners) (Northern Ireland) Regulations 1978;

**Period of Extended Hire**

Means (for the purposes of the Conduct Regulations) a six month period that the Client wishes a Temporary Resource to be supplied beyond the duration of the original Assignment or series of Assignments instead of paying a Transfer Fee;

**PSC**

Means an Intermediary in which the Temporary Resource meets the Conditions of Liability, and where relevant includes the Intermediary Staff providing their services through the PSC and any substitute, or assignees or sub-contractors to whom the PSC has assigned or sub-contracted the delivery of the Assignment Services;

**Qualifying Period**

Means 12 continuous Calendar Weeks during the whole or part of which the Temporary Resource is supplied by one or more Temporary Work Agencies to the relevant Client to work temporarily for and under the supervision and direction of the relevant Client in the same role as further defined in Regulation 7 of the Agency Workers Regulations;

**Relevant Pay**

Means any sum payable including any fee, bonus, commission, holiday pay, or other emoluments as further defined in Regulation 6 of the Agency Workers Regulations;

**Relevant Period**

Means the later of the period of eight weeks after the last working day of the Assignment; or the period of 14 weeks after the first working day of the Assignment. When determining the first working day of the Assignment, any previous supply of the Temporary Resource to the Client which occurred more than 42 calendar days before the current Assignment shall not be taken in to account;

**Relevant Terms and Conditions**

Means terms and conditions relating to: Relevant Pay; the duration of working time; night work; rest periods; rest breaks; and annual leave that are ordinarily included in the contracts of employees or workers (as appropriate) of the Client whether by collective agreement or otherwise and including (for the avoidance of doubt and without limitation) such terms and conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation;

**Remuneration**

Includes gross base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments (taxable and non-taxable) payable to or receivable by a Temporary Resource for services rendered to or on behalf of the Client. Where a company car is provided, a notional amount will be added to the sums paid to the relevant Temporary Resource in order to calculate the Transfer Fee;

**Temporary Work Agency**

Has the meaning given in the Agency Workers Regulations;

**Temporary Resource**

Means any temporary worker Introduced or supplied by the Employment Business to provide the Assignment Services to a Client, including an Agency Worker and unless otherwise expressly stated, any officer, employee, worker or representative of an Intermediary;

**Transfer Fee**

Means the fee payable in accordance with Clause 8.2 below and Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003;

**Working Day**

Means every day excluding Saturday, Sunday and public or Bank holidays in England; and

**WTR**

Means the Working Time Regulations 1998 and/or the Working Time Regulations (Northern Ireland) 1998.

Unless the context otherwise requires, references to the singular include the plural. The headings contained in these Terms are for convenience only and do not affect their interpretation.

Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of this Agreement) and all subordinate legislation made (before or after this Agreement) under it from time to time.

## 2. THE CONTRACT

- 2.1 These Terms and any applicable Assignment Details Form constitute the entire contract between the Employment Business and the Client for the supply of Temporary Resources by the Employment Business to the Client (**the Agreement**). This Agreement is deemed to be accepted by the Client by virtue of an Introduction and/or Engagement of the Temporary Resource or the passing of any information about the Temporary Resource to the Client and/or any third party at the request of the Client.
- 2.2 Unless otherwise agreed in writing by a director of the Employment Business, these Terms prevail over any terms of business or purchase conditions put forward by the Client.
- 2.3 Save where expressly stated otherwise in the Agreement, no variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Employment Business and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.
- 2.4 The Client acknowledges that where a Temporary Resource or any substitute or any person to whom the performance of the Assignment Services has been assigned or sub-contracted:
  - 2.4.1 Opt out of the Conduct Regulations, none of the Conduct Regulations (except for Regulation 13A) will apply to that Assignment; or
  - 2.4.2 Do not opt out of the Conduct Regulations, all of the Conduct Regulations will apply to that Assignment.
- 2.5 Each Assignment shall be deemed a separate contract by the Client to purchase services on these Terms.
- 2.6 The Parties agree that whilst the Employment Business may provide the Client with Temporary Resource that works through an Intermediary, the Intermediary shall not be a PSC of the Temporary Resource.

### **3. REGULATORY CLIENT OBLIGATIONS**

#### **ASSIGNMENT INFORMATION**

- 3.1 The Client undertakes to provide to the Employment Business details of the position which the Client seeks to fill, including the following:
  - 3.1.1 The type of work that the Temporary Resource would be required to do;
  - 3.1.2 The location and hours of work;
  - 3.1.3 The experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Temporary Resource to possess in order to work in the position;
  - 3.1.4 Any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
  - 3.1.5 The date the Client requires the Temporary Resource to start the Assignment; and
  - 3.1.6 The duration or likely duration of the Assignment.
- 3.2 The Client undertakes not to request the supply of a Temporary Resource to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by a worker who has been transferred by the Client to perform the duties of a person on strike or taking official industrial action.
- 3.3 The Client undertakes that it knows of no reason why it would be detrimental to the interests of a Temporary Resource for a Temporary Resource to fill the Assignment.

#### **AGENCY WORKER REGULATIONS OBLIGATIONS**

- 3.4 The Client will comply with its obligations under Regulations 12 (Rights of Agency Workers in relation to access to collective facilities and amenities) and 13 (Rights of Agency Workers in relation to access to employment) of the AWR. The Client acknowledges that once the Qualifying Period has elapsed, a pregnant Agency Worker has additional rights and the Client agrees to:
  - 3.4.1 Pay for time off for the pregnant Agency Worker to attend ante-natal medical appointments and ante-natal classes;
  - 3.4.2 Offer suitable alternative work (paid at the same rate as the original assignment) if the Client cannot make reasonable adjustments and the pregnant Agency Worker cannot complete the original Assignment for health and safety reasons; and
  - 3.4.3 Pay the pregnant Agency Worker for the remaining duration of the original assignment if the Client cannot find suitable alternative work.
- 3.5 To enable the Employment Business to comply with its obligations under the AWR, the Client undertakes as soon as possible prior to the commencement of each Assignment and during each Assignment and at any time at the Employment Business's request:
  - 3.5.1 To inform the Employment Business of any Calendar Weeks in which the relevant Agency Worker has worked in the same or a similar role with the Client through any third party and which count or may count towards the Qualifying Period;
  - 3.5.2 If, the relevant Agency Worker has worked in the same or a similar role with the Client via any third party, to provide the Employment Business with all the details of such work, including (without limitation) details of where, when and the period(s) during which such work was undertaken and any other details requested by the Employment Business;
  - 3.5.3 To inform the Employment Business if, the relevant Agency Worker has before the start of the relevant Assignment and/or during the relevant Assignment, carried out work which could count toward the Qualifying Period for the relevant Assignment in accordance with Regulation 9 of the AWR because they have:
    - 3.5.3.1 Completed two or more assignments with the Client;
    - 3.5.3.2 Completed at least one assignment with the Client and one or more earlier assignments with any member of the Client's Group; and/or
    - 3.5.3.3 Worked in more than two roles during an assignment with the Client and on at least two occasions worked in a role that was not the same role as the previous role.
  - 3.5.4 Except where the relevant Agency Worker will not complete the Qualifying Period during the term of the Assignment, to:
    - 3.5.4.1 Provide the Employment Business with written details of the basic working and employment conditions the relevant Agency Worker would be entitled to for doing the same job if the Agency Worker had been recruited directly by the Client as an employee or worker at the time the Qualifying Period commenced or with those of a Comparable Employee, such basic working and employment conditions being the Relevant Terms and Conditions;
    - 3.5.4.2 Inform the Employment Business in writing whether the Relevant Terms and Conditions provided are those of a hypothetical directly recruited employee or worker or those of a Comparable Employee;

- 3.5.4.3 If the Relevant Terms and Conditions provided are those of a Comparable Employee, provide the Employment Business with a written explanation of the basis on which the Client considers that the relevant individual is a Comparable Employee; and
  - 3.5.4.4 Inform the Employment Business in writing of any changes to the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced; and
- 3.5.5 Except where the relevant Agency Worker will not complete the Qualifying Period during the term of the Assignment, to give the Employment Business with written details of its pay and benefits structures and appraisal processes and any changes to the same.
- 3.6 In addition, for the purpose of awarding any bonus to which the Agency Worker may be entitled under the Agency Workers Regulations, the Client will, if required:
  - 3.6.1 Integrate the Agency Worker into its relevant performance appraisal system;
  - 3.6.2 Assess the Agency Worker's performance;
  - 3.6.3 Provide the Employment Business with copies of all documentation relating to any appraisal of the Agency Worker, including without limitation written details of the outcome of any appraisal and the amount of any bonus awarded; and
  - 3.6.4 Provide the Employment Business with all other assistance the Employment Business may request in connection with the assessment of the Agency Worker's performance for the purpose of awarding any bonus.
- 3.7 Without prejudice to Clauses 10.11 and 10.12, the Client shall inform the Employment Business in writing of any:
  - 3.7.1 Oral or written complaint the Agency Worker makes to the Client which is or may be a complaint connected with rights under the Agency Workers Regulations; and
  - 3.7.2 Written request for information relating to the Relevant Terms and Conditions that the Client receives from the Agency Worker as soon as possible but no later than 7 calendar days from the day on which any such oral complaint is made to or written complaint or request is received by the Client and the Client will take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business, in order to resolve any such complaint or to provide any such information in a written statement to the Agency Worker within 28 days of the Client's receipt of such the Client will provide the Employment Business with a copy of any such written statement.
- 3.8 The Client will comply with all the Employment Business' requests for information and any other requirements to enable the Employment Business to comply with the Agency Workers Regulations.
- 3.9 The Client warrants that:
  - 3.9.1 All information and documentation supplied to the Employment Business in accordance with this Clause 3 is complete, accurate and up-to-date; and
  - 3.9.2 It will, during the term of the relevant Assignment, immediately inform the Employment Business in writing of any subsequent change in any information or documentation provided in accordance with this Clause 3.

## **4. CHARGES**

- 4.1 The Client agrees to pay such hourly or daily Charges of the Employment Business as shall be notified to and agreed with the Client. The hourly Charges are calculated according to the number of hours worked by the Temporary Resource (to the nearest quarter hour) and comprise mainly the Temporary Resource's pay but also include the Employment Business' commission, employer's National Insurance contributions, pension costs, apprenticeship levy, working time directive and any travel, hotel or other expenses as may have been agreed with the Client or, if there is no such agreement, such expenses as are reasonable.
- 4.2 VAT will be charged on invoices in their entirety and at the prevailing rate. The Employment Business reserves the right to recover additional VAT on an invoice even if already paid by the Client where new guidance or legislation is issued by HMRC pertaining to a change in VAT status or application.
- 4.3 The Charges are invoiced to the Client on a weekly basis and are payable by the Client within 14 days of the date of invoice. The Employment Business reserves the right to charge interest on a daily basis on any overdue amounts in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.4 Without prejudice to the provisions for the accrual of interest on unpaid invoiced amounts in accordance with Clause 4.3 above, should the Client dispute an invoice, the Client must notify the Employment Business immediately in writing or in any event within 14 days of the date of the invoice. If the Employment Business does not receive such notification from the Client within the specified period, the Client shall pay the full amount of the invoice.
- 4.5 Where the Client disputes part of an invoice, the undisputed part shall be paid by the Client.
- 4.6 There are no refunds or rebates payables in respect of the Charges of the Employment Business.
- 4.7 The Client agrees to pay the Transfer Fees in accordance with Clauses 8 and 9.

- 4.8 The Client agrees to indemnify the Employment Business against all costs and expenses incurred in recovering monies due to the Employment Business by the Client in any event.
- 4.9 The Client hereby waives all and any future claims and rights of set off against any payment for Services provided or any payment due under this Agreement and agrees to pay the Charges due to the Employment Business and all other amounts regardless of any equity, set off or crossclaim on the part of the Client against the Employment Business.
- 4.10 The Employment Business reserves its right to vary its Charges for Services. The amended charge rate shall be effective upon the Client being given 30 days written notice stating the cause and manner of calculation of the new Charge.
- 4.11 In addition to the Charges calculated in accordance with this Clause 4, the Client will pay the Employment Business:
- 4.11.1 An amount equal to any bonus that the Client awards to the Temporary Resource in accordance with Clause 3.9 immediately following any such award and the Employment Business will pay any such bonus to the Temporary Resource. For the avoidance of doubt, the Client will also pay, if applicable, any employer's National Insurance Contributions and the Employment Business's commission on the bonus (calculated using the same percentage rate as that used under this Agreement) in addition to any bonus payable to the Temporary Resource;
  - 4.11.2 An amount equal to any paid holiday leave to which the Temporary Resource is entitled under the Working Time Regulations and, where applicable, the Agency Workers Regulations and which is accrued during the course of a Assignment; and
  - 4.11.3 Any other amounts relating to the Relevant Terms and Conditions to which the Temporary Resource will be entitled under the Agency Workers Regulations, where applicable.
- 4.12 Notwithstanding Clause 4.10, the Employment Business reserves the right to vary the Charges by giving written notice to the Client:
- 4.12.1 In order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the Agency Workers Regulations change in statutory payroll tax rates and pension obligations; and/or
  - 4.12.2 If there is any variation in the Relevant Terms and Conditions.

## **5. RECRUITMENT SERVICES**

- 5.1 When making an Introduction of a Temporary Resource to the Client the Employment Business shall inform the Client of the identity of the Temporary Resource; that the Temporary Resource has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment; how the Temporary Resource will be employed/engaged by the Employment Business; that the Temporary Resource is willing to work in the Assignment and the Charges.
- 5.2 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 or Bank holiday) following, save where the Temporary Resource is being Introduced for an Assignment in the same position as one in which the Temporary Resource had previously been supplied within the previous five business days and such information has already been given to the Client, unless the Client requests that the information be resubmitted.

## **6. GENERAL CLIENT OBLIGATIONS**

- 6.1 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) the Client shall sign the Employment Business' time sheet verifying the number of hours worked by the Temporary Resource during that week.
- 6.2 Signature of the time sheet by a representative of the Client is confirmation of the number of hours worked and conclusive acceptance of the Assignment Services by the Temporary Resource pursuant to these terms and conditions. The charges shall be payable without reference to any other services provided or due to be provided by the Employment Business. The Employment Business may exclusively rely on the timesheets when determining the Remuneration and fee due to the Employment Business. If the Client is unable to sign a time sheet produced for authentication by the Temporary Resource because the Client disputes the hours claimed, the Client shall inform the Employment Business as soon as is reasonably practicable (and in any event no later than 5 working days after the time sheet was provided to the Client for signing) and shall co-operate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what hours, if any, were worked by the Temporary Resource. Failure to sign the time sheet does not absolve the Client's obligation to pay the charges in respect of the hours worked.



- 6.3 Should the Client need to cancel a booked Assignment then the Client shall use reasonable endeavours to notify the Employment Business of its wish to cancel that Assignment at least two (2) hours before such Temporary Resource is due to commence the Assignment. If the Client fails to provide the Employment Business with such notice then the Client shall be liable to pay the Employment Business 50 percent of the value of the first booked shift at the agreed rate of Charges (as a genuine pre-estimate of the losses incurred by the Employment Business in such circumstances) related to the provision of those particular Assignment Services. If the Client fails to provide the Employment Business with such notice specified above and the Temporary Resource arrives at the Client's premises to commence the delivery of the Assignment Services and that Temporary Resource is no longer required by the Client, the Client shall be liable to pay the Employment Business 100 percent of the Charges for the first booked shift (as a genuine pre-estimate of the losses incurred by the Employment Business in such circumstances) related to the provision of those particular Assignment Services.
- 6.4 The Client shall not be entitled to decline to sign a timesheet on the basis that he is dissatisfied with the work performed by the Temporary Resource. In cases of unsuitable work the Client should apply the provisions of Clause 11.1 and 11.2 below.
- 6.5 The Client shall notify the Employment Business immediately and without delay and in any event within 24 hours if the Temporary Resource fails to attend work or notifies the Client that the Temporary Resource is unable to attend work for any reason.
- 6.6 Unless otherwise agreed in writing by the Employment Business, the Employment Business shall not be responsible for the costs of any telephone bills, meals, accommodation or any other charges which the Temporary Resource incurs during the Assignment.
- 6.7 The Client shall advise the Temporary Resource of any special health and safety matters about which the Employment Business is required to inform the Temporary Resource and about any requirements imposed by law or by any professional body, which must be satisfied if the Temporary Resource is to fill the Assignment.

## **7. PAYMENT OF THE TEMPORARY RESOURCE**

- 7.1 The Employment Business is responsible for paying all Temporary Resources. The Client shall have no responsibility for the deduction and payment of national insurance contributions and PAYE income tax applicable to a Temporary Resource under the requirements of the NICs Legislation and ITEPA.

## **8. TEMP-TO-TEMP AND TEMP-TO-PERM**

- 8.1 If during or prior to expiry of the Relevant Period, after the Introduction of a Temporary Resource by the Employment Business to the Client the Client Engages the Temporary Resource either (1) directly or (2) pursuant to being supplied by another employment business, the Client shall be liable to pay a Transfer Fee to the Employment Business.
- 8.2 All Transfer Fees are calculated as follows: 25% of the monthly Remuneration x 12, or if the actual amount of the Remuneration is not known, the hourly charges agreed pursuant to Clause 4.1 multiplied by 300 times the hourly charge.
- 8.3 If the Client wishes to Engage the Temporary Resource other than through the Employment Business, but without liability to pay a Transfer Fee, the Client may, on giving one week's written notice to the Employment Business, engage the relevant Temporary Resource for the Period of Extended Hire.
- 8.4 During the Period of Extended Hire the Employment Business shall supply a Temporary Resource on the same terms on which it has or would have been supplied during the Assignment and in any case, on terms no less favourable than those terms which applied immediately before the Employment Business received the notice in Clause 8.3 and the Client shall continue to pay the Charges. If the Employment Business is unable to supply a Temporary Resource for any reason outside its control for the whole or any part of the Period of Extended Hire, or the Client does not wish to hire the Temporary Resource on the same terms as the Assignment, but a Temporary Resource is Engaged by the Client, the Client shall pay the Transfer Fee, reduced pro-rata to reflect any Charges paid by the Client during any part of the Period of Extended Hire worked by the Temporary Resource before being Engaged by the Client. If the Client does not give the Employment Business notice of its intention to Engage a Temporary Resource other than via the Employment Business before the Engagement takes place, the parties agree that the Transfer Fee shall be due in full.
- 8.5 Where, before the start of the Client's Engagement of a Temporary Resource other than through the Employment Business, the Employment Business and the Client agree that such Engagement will be on the basis of a fixed term of less than 12 months, the Employment Business may, in its absolute discretion, reduce the Transfer Fee to reflect the amount of the Charges paid or payable in respect of the Period of Extended Hire. Such reduction is subject to the Client Engaging the Temporary Resource for the agreed fixed term. Should the Client extend the Temporary Resource's Engagement or re-Engage the Temporary Resource within 12 months from the commencement of the initial Engagement the Employment Business reserves the right to recover the balance of the Transfer Fee.
- 8.6 No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due where applicable.

## **9. TEMP-TO-THIRD PARTY**

- 9.1 If during or following the supply of a Temporary Resource by the Employment Business to the Client, the Client Introduces the Temporary Resource to a third party including any Affiliate of the Client which results in the Engagement of the Temporary Resource by the third party within the Relevant Period, the Client shall be liable to pay a Transfer Fee to the Employment Business in accordance with Clause 8.2.



- 9.2 In the event that there is an Introduction of a Temporary Resource to the Client which does not result in the supply of that Temporary Resource by the Employment Business to the Client, but the Temporary Resource is Introduced by the Client to a third party which results in the Engagement of the Temporary Resource by the third party including any Affiliate of the Client within six months from the Introduction date the Client shall immediately notify the Engagement to the Employment Business and be liable to pay a Transfer Fee.

## 10. LIABILITY

- 10.1 Whilst the Employment Business makes reasonable efforts to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from a Temporary Resource and to provide the same in accordance with the Assignment details as provided by the Client, the Employment Business does not accept liability for any Losses made by the Client, arising from the failure to provide a Temporary Resource, for completion of the Assignment, the Assignment Services, or the Specified Deliverables, or from the negligence, dishonesty, misconduct or lack of skill of a Temporary Resource or if a Temporary Resource terminates the Assignment for any reason.
- 10.2 Subject to 10.3, Temporary Resources supplied by the Employment Business pursuant to these Terms are engaged under contracts for services. They are not the employees of the Employment Business but are deemed to be under the supervision and direction of the Client from the time they report to take up duties and for the duration of the Assignment. The Client agrees to be responsible for all acts, errors or omissions of the Temporary Resource, whether wilful, negligent or otherwise as though the Temporary Resource was on the payroll of the Client.
- 10.3 The Client will also comply in all respects with all statutes by-laws, codes of practice and legal requirements including, for the avoidance of doubt, the WTR, the Data Protection Laws, Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999 or the Health and Safety at work (Northern Ireland) Order 1978 and the management of Health and Safety at Work (Northern Ireland) Regulations 2000, by-laws, codes of practice and legal requirements to which the Client is ordinarily subject in respect of the Client's own staff including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Temporary Resource during all Assignments.
- 10.4 The Client shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business by reason of any proceedings, claims or demands by any third party (including specifically, but without limitation, HMRC and any successor, equivalent or related body pursuant to any provisions of ITEPA or the NICs Legislation (and/or any supporting or consequential secondary legislation relating thereto)) arising out of any Assignment or arising out of any non-compliance with, and/or due to any breach of, this Agreement by the Client.
- 10.5 The Client shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business by reason of any proceedings, claims or demands by any third party arising out of any Assignment or arising out of any non-compliance with, and/or due to any breach of, this Agreement by the Client.
- 10.6 The following provisions of this Clause 10 set out the entire financial liability of the Employment Business (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:
- 10.6.1 Any breach of this Agreement; and
- 10.6.2 Any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement.
- 10.7 All warranties, conditions and other terms implied by law are, to the fullest extent permitted by law, excluded from these Terms.
- 10.8 Nothing in these Terms excludes or limits the liability of the Employment Business for death or personal injury caused by the Employment Business negligence or for fraudulent misrepresentation or for any other loss which it is not permitted to exclude under law.
- 10.9 Subject to Clauses 10.8 and 10.9:
- 10.9.1 The Employment Business' total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Assignment, shall not exceed 120% of the charges paid by the Client to the Employment Business in respect of the specific Assignment giving rise to the liability;
- 10.9.2 The Employment Business shall not be liable to the Client for any loss of profit, loss of business, depletion of goodwill, costs, expenses or any indirect or consequential loss or damage, whatsoever (howsoever caused) which arise out of or in connection with the Assignment.
- 10.10 Each party shall inform the other in writing of any AWR Claim which comes to the notice of the party as soon possible but no later than 7 calendar days from the day on which any such AWR Claim comes to the notice of the party.
- 10.11 If the Temporary Resource brings, or threatens to bring, any AWR Claim, the parties undertake to the other to take such action and give such information and assistance as the other party may request, and within any timeframe requested by the other party and at their own cost, to avoid, dispute, resist, mitigate, compromise or defend any such AWR Claim and to appeal against any judgment given in respect thereof.

## 11. TERMINATION

- 11.1 The Client will take sufficient steps to ensure its satisfaction with the Temporary Resource's standards of workmanship. If the Client reasonably considers that the services of the Temporary Resource are unsatisfactory, the Client may terminate the Assignment either by instructing the Temporary Resource to leave the Assignment immediately, or by directing the Employment Business to remove the Temporary Resource.
- 11.2 In accordance with Clause 11.1, the Employment Business may, in such circumstances, reduce or cancel the charges for the time worked by that Temporary Resource, provided that the Assignment terminates:
- 11.2.1 Within two hours of the Temporary Resource commencing the Assignment where the booking is for more than seven hours; or
- 11.2.2 Within one hour for bookings of seven hours or less; provided that notification of the unsuitability of the Temporary Resource is confirmed in writing to the Employment Business immediately and without delay and in any event within 24 hours of the termination of the Assignment.
- 11.3 The Employment Business shall notify the Client immediately if it receives or otherwise obtains information which gives it reasonable grounds to believe that a Temporary Resource supplied to the Client is unsuitable for the Assignment and in those circumstances either the Client or the Employment Business may terminate the Assignment without prior notice and without liability.
- 11.4 The Client may terminate an Assignment other than pursuant to Clause 11.1 in accordance with clause 6.3. The Client will ensure that the notice of termination includes details of the reasons for termination.
- 11.5 The Client may not terminate the Assignment solely for the reason of the Temporary Resource's absence due to illness or injury unless such illness or injury prevents the Temporary Resource from providing services pursuant to this Agreement to the Client for a consecutive period of one whole week (i.e. 5 working days) or for an aggregate period of two weeks (i.e. 10 working days) in any period of 12 calendar months.
- 11.6 The Employment Business or the Temporary Resource may terminate the assignment without prior notice and without liability at any point.
- 11.7 Either party is entitled to terminate the Assignment immediately in the event that the other party:
- 11.7.1 Commits a material, or willful and persistent breach of this Agreement that (if capable of remedy) is not remedied within 5 working days of notice of such breach'
- 11.7.2 Ceases to trade or has a receiver appointed, or is insolvent or appoints or has an administrator appointed; or
- 11.7.3 Does not pay any amount due to the other party, in full and on the date that the payment falls due.
- 11.8 The Employment Business may terminate an Assignment with immediate effect by notice in writing if:
- 11.8.1 The Employment Business knows or suspects that the Client has breached the Data Protection Laws.

## 12. CONFIDENTIALITY AND DATA PROTECTION

- 12.1 All information relating to a Temporary Resource is confidential and where that information relates to an individual is also subject to the Data Protection Laws and is provided solely for the purpose of providing Assignment Services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the information at all times.
- 12.2 The Client must keep confidential all information relating to the Employment Business's business which is capable of being confidential and must not divulge such information to any third party, except information which is in the public domain.

## 13. NOTICES

- 13.1 Any notice required to be given under these Terms, or in connection with the matters contemplated by these Terms, shall (except where specifically provided otherwise) be in writing and personally delivered, sent by pre-paid first-class post or by fax. Such notice shall be deemed to have been given on delivery at the relevant address or, if sent by first-class pre-paid post, two business days (that is, any day which is not a Saturday, Sunday or public holiday in the place at or to which the notice is left or sent) after the date of posting, or if sent by fax, when dispatched, subject to confirmation of uninterrupted transmission by a transmission report.

## 14. WAIVER

- 14.1 No delay or failure by the Employment Business to exercise any of its powers, rights or remedies under these Terms will operate as a waiver of them nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver, to be effective, must be in writing. The remedies provided in these Terms are cumulative and not exclusive of any remedies provided by law.

## 15. SEVERABILITY

- 15.1 If any part of these Terms is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of the Terms which will continue to be valid and enforceable to the fullest extent permitted by law.

## 16. THIRD PARTIES

- 16.1 No person who is not a party to these Terms has any right to enforce its terms and shall have no right under the Contracts (Rights of Third Parties) Act 1999.

## 17. LAW

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

## 18. INDUSTRY SPECIFIC REQUIREMENTS

- 18.1 In this clause 18 the following definitions apply:

### **Driving Legislation**

Means the Transport Act 1968, the AETR, the RT(WT)R and the EU Drivers' Hours Regulation;

### **EU Drivers' Hours Regulation**

Means Regulation (EC) No. 561/2006 of the European Parliament and of the Council of 15 March 2006;

### **Mobile Worker**

Means any "mobile worker" as defined under the RT(WT)R;

### **Other Work**

Means all activities which are defined as working time under the Working Time Directive except driving and includes any work within or outside the transport industry where the Temporary Resource is not at the disposal of the Client.

### **Period of Availability**

Means a "period of availability" as defined under the RT(WT) R, namely, a period during which the Mobile Worker is not required to remain at his/her workstation (having the same meaning as defined under the RT(WT)R), but is required to be available to answer any calls to start or resume driving or to carry out other work, including periods during which the Mobile Worker is accompanying a Vehicle being transported by a ferry or by a train as well as periods of waiting at frontiers and those due to traffic prohibitions provided that the Mobile Worker knows before the start of the period about that period of availability and the reasonably foreseeable duration of the period of availability;

### **RT(WT)R**

Means the Road Transport (Working Time) Regulations 2005;

### **Vehicle**

Means a "goods vehicle" as defined under the RT(WT)R;

### **Working Time**

Means "working time" as defined under the RT(WT)R, namely, the time from the beginning to the end of work during which the Temporary Resource is at his/ her workstation (as defined under the RT(WT)R, at the disposal of the Client and/or the Employment Business and/or a Temporary Work Agency and exercising his/her functions or activities, being:

- (a) Time devoted to all road transport activities including, in particular, driving, loading and unloading, assisting passengers boarding and disembarking from a Vehicle, cleaning and technical maintenance, and all other work intended to enhance the safety of the Vehicle, its cargo and passengers or to fulfil the legal or regulatory obligations directly linked to the specific transport operation under way, including monitoring of loading and unloading and dealing with administrative formalities with police, customs, immigrations officers and others; or
- (b) Time during which the Temporary Resource cannot dispose freely of his/her time and is required to be at his/her workstation, ready to take up normal work with certain tasks associated with being on duty, in particular during periods awaiting loading or unloading where their foreseeable duration is not known in advance, that is to say either before departure or just before the actual start of the period in question, or under collective agreements or workforce agreements, (with the terms "workstation", "collective agreements" and "workforce agreements" having the same meaning as defined under the RT(WT)R);

- 18.2 The Client will assist the Employment Business in complying with the Employment Business' duties under such provisions of the Driving Legislation and the WTR as may be applicable and any other similar legislation as may be applicable to the Assignment in any country or countries by supplying any relevant information about and copies of any relevant documentation (including without limitation tachograph charts) relating to the Assignment requested by the Employment Business, and the Client will not do anything to cause the Employment Business to be in breach of its obligations under such legislation. If the Client requires the services of a Temporary Resource for more than 48 hours in any week during the course of an Assignment, the Client must notify the Employment Business of this requirement before the commencement of the Assignment or at the very latest, where this is not reasonably practicable, before the commencement of the week in which the Client requires the Temporary Resource to work in excess of 48 hours.
- 18.3 In relation to any Vehicles and operations subject to the Goods Vehicles (Licensing of Operators) Act 1995 (the Act), it is a condition of these Terms that the Client:
- 18.3.1 Holds a complete, accurate and up-to-date operator's licence under the Act throughout the period of any Assignment and the Client hereby warrants that it holds such a licence;
- 18.3.2 Will comply with all of its obligations for obtaining and maintaining such operator's licence under the Act; and
- 18.3.3 Will upon request permit the Employment Business to inspect and take copies of the Client's operator's licence.
- 18.4 The Client will take all reasonable steps to ensure that all transport time schedules which it implements and any other arrangements regarding working time in relation to the Assignment will conform in full to the requirements of the Driving Legislation and the WTR as may be applicable to the Assignment and any other similar regulations in any country or countries applicable to the Assignment;
- 18.5 The Client undertakes to comply with all statutory duties applicable in respect of any Assignment, including (without limitation) making proper arrangements to ensure that the following matters are compliant with the relevant statutory obligations: driving licences and permits, drivers' hours and records, the issue, collection and other use of tachographs, drivers cards and company cards, maintenance and safety of all Vehicles driven, operated or used by any Temporary Resource, all duties under health and safety regulations, road traffic and liability insurances including fully comprehensive insurance for the Vehicle and its contents. The Client agrees to allow the Employment Business to inspect and take copies of any relevant policies of insurance and any other relevant documentation.
- 18.6 The Client will take all reasonable steps and give any reasonable instructions to the Temporary Resource for the purpose of ensuring that the performance of the Assignment complies with the Department of Transport's Highway Code and any other rules regarding road safety applicable to the country or countries in which any journeys (or portion of journeys) take place.
- 18.7 Notwithstanding Clause 4.1, the Client agrees to pay for any travel and hotel expenses, driving charges (for example motorway and bridge tolls, any congestion charge or similar charge) or other expenses as may have been agreed with the Client or, if there is no such agreement, such expenses as are reasonable.
- 18.8 For the avoidance of doubt the Charges do not include any tickets, fines, penalties or similar for parking, speeding or any other motoring or driving offences. The Client is liable for all fines and penalties and the Employment Business is not liable to recover these from the Temporary Resource.

**I CONFIRM I AM AUTHORISED TO SIGN THESE TERMS FOR AND ON BEHALF OF THE HIRER. SIGNED FOR AND ON BEHALF OF:**

<b>CLIENT NAME:</b>	
<b>SIGNATURE:</b>	
<b>PRINT NAME HERE:</b>	