



## TERMS OF BUSINESS FOR THE SUPPLY OF AGENCY WORKERS

### 1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms the following definitions apply:

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| <b>“Actual Vacancies”</b>         | means the Hirer's vacant positions as the Hirer informs the Employment Business from time to time in accordance with this agreement.  |
| <b>“Agency Worker”</b>            | means the Worker who is Introduced by the Employment Business to provide services to the Hirer not as an employee of the Hirer, who is deemed to be an agency worker for the purposes of regulation 3 of the AWR 2010, or an employee of the Agency Worker if the Agency Worker is a limited company;   |
| <b>“AWR”</b>                      | means the Agency Workers Regulations 2010;  |
| <b>“Assignment”</b>               | means assignment services to be performed by the Agency Worker for the Hirer for a period of time during which the Agency Worker is supplied by the Employment Business to work temporarily for and under the supervision and direction of the Hirer;   |
| <b>“AWR Claim”</b>                | means any complaint or claim to a tribunal or court made by or on behalf of the Agency Worker against the Hirer and/or the Employment Business for any breach of the AWR;   |
| <b>“Calendar Week”</b>            | means any period of seven days starting with the same day as the first day of the First Assignment;   |
| <b>“Charges”</b>                  | means the hourly charges of the Employment Business calculated in accordance with clause 6.1 and as may be varied from time to time in accordance with these Terms;   |
| <b>“Comparable Employee”</b>      | means as defined in Schedule 1 to these Terms;  |
| <b>“Conduct Regulations”</b>      | means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;  |
| <b>“Confidential Information”</b> | means any and all confidential commercial, financial, marketing, technical or other information or data of whatever nature relating to the Hirer or Employment Business or their business or affairs (including but not limited to these Terms, data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information concerning the Assignment) in any form or medium whether disclosed or granted access to whether in writing, orally or by any other means, provided to the Agency Worker or any third party in relation to the assignment by the Hirer or the Employment Business or by a third party on behalf of the Hirer whether before or after the date of these Terms together with any reproductions of such information in any form or medium or any part(s) of such information; |

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| <b>“Control”</b>                     | 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 contact or otherwise, and “Controls” and “Controlled” shall be construed accordingly;  |
| <b>“Data Protection Laws”</b>        | Means (i) the Data Protection Act 2018, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018;   |
| <b>“Employment Business”</b>         | means Berry Recruitment Limited (Registered company no 7036111) of Porters House, 4 Porters Wood, St Albans, Hertfordshire AL3 6PQ;   |
| <b>“Engagement”</b>                  | means the engagement, employment, or use of the Agency Worker by the Hirer or any third party to whom the Agency Worker has been introduced by the Hirer, directly or indirectly through any employment business other than through the Employment Business, on a permanent or temporary basis, whether under a contract of service or for services, and/or through a company of which the Agency Worker is an officer, employee or other representative, an agency, licence, franchise or partnership arrangement, or any other engagement; and “Engage”, “Engages” and “Engaged” shall be construed accordingly;  |
| <b>“EU Drivers Hours Regulation”</b> | means Regulation (EC) No. 561/2006 of the European Parliament and of the council of 15 <sup>th</sup> March 2006;  |
| <b>“Hirer”</b>                       | means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Agency Worker is introduced;  |
| <b>“Hirer’s Group”</b>               | means (a) any individual, company, partnership, statutory body or other entity which from time to time controls the Hirer, including (but not limited to) as a holding company as defined in section 1159 of the Companies Act 2006; and (b) any company, partnership, statutory body or other entity which from time to time is Controlled by or is under common Control with the Hirer, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006;   |
| <b>“Introduction”</b>                | means (i) the passing to the Hirer of a curriculum vitae or information which identifies the Worker; or (ii) the Hirer’s interview of the Agency Worker (in person or by telephone or by any other means), following the Hirer’s instruction to the Employment Business to supply a temporary worker; or (iii) the supply of the Agency Worker; and, in any case, which leads to an Engagement of the Worker; and “Introduced” and “Introducing” shall be construed accordingly; In so far as the person engaged is a member of the Employment Business’s own staff an Introduction shall be deemed to have occurred on any and each communication whether direct or indirect between the staff member and the Hirer; |
| <b>“Introduction Fee”</b>            | means the fee payable in accordance with clause 8 of these Terms and Regulation 10 of the Conduct Regulations;  |
| <b>“Losses”</b>                      | means all losses, liabilities, damages, costs, expenses whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill,  |

management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands;

**“Mobile Worker”**

means any “mobile worker” as defined under the Road Transport (Working Time) Regulations namely any worker forming part of travelling staff, including trainees and apprentices, who is in the service of an undertaking which operates transport services for passengers or goods by road for hire or reward or on its own account;

**“Periods of Availability”**

means a “period of availability” as defined under the Road Transport (Working Time) Regulations 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 Road Transport (Working Time) Regulations), 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;

**“Qualifying Period”**

means 12 continuous Calendar Weeks during the whole or part of which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Hirer to work temporarily for and under the supervision and direction of the relevant Hirer in the same role, and as further defined in Schedule 1 to these Terms;

**“Relevant Terms and Conditions”**

means terms and conditions relating to:

- (a) pay;
- (b) the duration of working time;
- (c) night work;
- (d) rest periods;
- (e) rest breaks; and
- (f) annual leave

that are ordinarily included in the contracts of employees or workers (as appropriate) of the Hirer 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 annual 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 and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Agency Worker for services provided to or on behalf of the Hirer or any third party. If the Agency Worker does not work for 12 months then the Remuneration shall be calculated as if the Agency Worker had done.

**“RIDDOR”**

means The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013

**“Road Transport (Working Time) Regulations”**

means the Road Transport (Working Time) Regulations 2005;

**“Temporary Work Agency”**

means as defined in schedule 1 to these Terms;

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| <b>“Territory”</b>         | means the United Kingdom.   |
| <b>“Terms”</b>             | means these terms of business (including the attached schedules) together with any applicable Assignment Details Form;  |
| <b>“Transfer Fee”</b>      | means the fee payable in accordance with clause 8 of these Terms and Regulation 10 of the Conduct Regulations;  |
| <b>“Vulnerable Person”</b> | means any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention and includes any person under the age of eighteen;  |
| <b>“Vehicle”</b>           | means a “goods vehicle” as defined under the Road Transport (Working Time) Regulations;   |
| <b>“Worker”</b>            | means an individual worker, or a worker who supplies their services through a company or other legal entity, as the case may be including any of the Employment Business's own employees, workers or agency staff but excluding any individual who supplies their services through an intermediary falling within one of conditions A to C in section 61N of the Income Tax (Earnings and Pensions) Act 2003;   |
| <b>“Working Day”</b>       | means 7.5 working hours during which the Hirer shall pay the current Charges of the Employment Business;  |
| <b>“Working Time”</b>      | means working time as defined under the Road Transport (Working Time) Regulations 2005 namely time consisting of those periods during which the Temporary Driver is at their workstation at the disposal of the Hirer and exercising his functions or activities and that such periods of time are devoted to road transport activities such as driving, loading and unloading, assisting passengers, boarding the vehicle, cleaning and maintenance of the vehicle and all other work intended to enhance the safety of the cargo and passengers or to fulfil the legal or regulatory obligations linked to the specific transport operations; and |
| <b>“WTR”</b>               | means the Working Time Regulations 1998.  |

- 1.2. Unless the context otherwise requires, references to singular include the plural and references to the masculine include the feminine and vice versa.
- 1.3. The headings contained in these Terms are for convenience only and do not affect their interpretation.
- 1.4. Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of these Terms) and all subordinate legislation made (before or after these Terms) under it from time to time.

## 2. THE CONTRACT

- 2.1 These Terms constitute the contract between the Employment Business and the Hirer for the supply of the Agency Worker's services by the Employment Business to the Hirer and are deemed to be accepted by the Hirer by virtue of an Introduction or the Engagement of the Agency Worker, or the passing of any information by the Hirer about an Agency Worker to any third party following an Introduction.
- 2.2. These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by a director of the Employment Business, these Terms prevail over any terms of business or purchase conditions (or similar) put forward by the Hirer.
- 2.3. Subject to clause 6.3, no variation or alteration to these Terms shall be valid unless the details of such variation are agreed between a director of the Employment Business and the Hirer and are set out in writing and a copy of the varied Terms is given to the Hirer stating the date on or after which such varied Terms shall apply.

- 2.4. For the purposes of the Conduct Regulations, the Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973) when Introducing Agency Workers for Assignments with the Hirer.
- 2.5. The Hirer agrees that it will not request the Employment Business to supply a Worker in a way which could cause the Employment Business to breach Regulation 9 of the AWR.

### 3. HIRER OBLIGATIONS

- 3.1. To enable the Employment Business to comply with its obligations under the Conduct Regulations the Hirer undertakes to provide to the Employment Business details of the position which the Hirer seeks to fill, including the following:
  - 3.1.1. the type of work that the Agency Worker would be required to do;
  - 3.1.2. the location and hours of work;
  - 3.1.3. the experience, training, qualifications and any authorisation which the Hirer considers necessary or which are required by law or any professional body for the Agency Worker to possess in order to work in the position;
  - 3.1.4. any risks to health or safety known to the Hirer and what steps the Hirer has taken to prevent or control such risks;
  - 3.1.5. the date the Hirer requires the Agency Worker to commence the Assignment;
  - 3.1.6. any expenses payable to the Agency Worker;
  - 3.1.7. the duration or likely duration of the Assignment.
- 3.2. The Hirer will assist the Employment Business in complying with the Employment Business' duties under the WTR by supplying any relevant information about the Assignment requested by the Employment Business and the Hirer will not do anything to cause the Employment Business to be in breach of its obligations under these Regulations. If the Hirer requires the services of an Agency Worker for more than 48 hours in any week during the course of an Assignment, the Hirer 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 Hirer requires the Agency Worker to work in excess of 48 Hours.
- 3.3. The Hirer will comply with its obligations under Regulation 12 (Rights of agency workers in relation to access to collective facilities and amenities) and 13 (Rights of agency workers in relation to access to employment) of the AWR.
- 3.4. To enable the Employment Business to comply with its obligations under the AWR, the Hirer undertakes as soon as possible prior to the commencement of each Assignment and during each assignment (as appropriate) and at any time at the Employment Business' request:
  - 3.4.1. to inform the Employment Business of any Calendar Weeks since 1 October 2011 in which the relevant Agency Worker has Worked in the same or a similar role with the Hirer via any third party prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment which count or may count towards the Qualifying Period;
  - 3.4.2. if the Agency Worker has worked in the same or a similar role with the Hirer via any third party prior to the date of commencement of the relevant Assignment and/or works in the same or a similar role with the Hirer via any third party during the relevant Assignment, to provide the Employment Business with all the details of such work which may count towards the Qualifying Period, 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;

3.4.3. to inform the Employment Business if the Agency Worker has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment carried out work which could be deemed to count toward the Qualifying Period for the relevant Assignment in accordance with Regulation 9 of the AWR because s/he has:

3.4.3.1. completed two or more assignments with the Hirer;

3.4.3.2. completed at least one assignment with the Hirer and one or more earlier assignments with any member of the Hirer's Group; and/or

3.4.3.3. worked in more than two roles during an assignment with the Hirer and on at least two occasions worked in a role that was not the same role as the previous role;

3.4.4. save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to:

3.4.4.1. provide the Employment Business with written details of the basic working and employment conditions the Agency Worker would be entitled to for doing the same job if the Agency Worker had been recruited directly by the Hirer as an employee or worker at the time the Qualifying Period commenced or with those of a Comparable Employee, such basic working and employment conditions being the Relevant Terms and Conditions;

3.4.4.2. 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;

3.4.4.3. 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 Hirer considers that the relevant individual is a Comparable Employee; and

3.4.4.4. inform the Employment Business in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced; and

3.4.5. save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to provide the Employment Business with written details of its pay and benefits structures and appraisal processes and any variations of the same.

3.5. In addition, for the purpose of awarding any bonus to which the Agency Worker may be entitled under the AWR, the Hirer will:

3.5.1. integrate the Agency Worker into its relevant performance appraisal system;

3.5.2. assess the Agency Worker's performance;

3.5.3. provide 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

3.5.4. 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.

3.6. In relation to any Agency Worker who has completed the Qualifying Period and who is pregnant, the Hirer agrees as follows:

- 3.6.1. to notify the Employment Business immediately if the Agency Worker informs the Hirer that she is pregnant;
- 3.6.2. to carry out an appropriate risk assessment (at the Hirer's cost) to identify any possible risks to the Agency Worker's health (or that of her unborn baby) and, if any such risks are identified, to remove those risks (again, at the Hirer's Cost);
- 3.6.3. that it shall not terminate the Assignment on the grounds of the Agency Worker's pregnancy (save in the circumstances set out below).

If, having carried out a risk assessment pursuant to sub-clause 3.6.2. above, it is not possible to remove any risks that have been identified, the Employment Business will remove the Agency Worker from the Assignment and the Hirer shall fully indemnify the Employment Business in respect of any sums that may be payable to the Agency Worker pursuant to the Agency Worker Regulations and/or the Employment Rights Act 1996 by virtue of the termination of such Assignment.

- 3.7. The Hirer will comply with all the Employment Business' request for information and any other requirements to enable the Employment Business to comply with the AWR.
- 3.8. The Hirer warrants that:
  - 3.8.1. all information and documentation supplied to the Employment Business in accordance with clauses 3.4, 3.5, 3.6, 3.7, 18.2 and 18.3 is complete, accurate and up-to-date; and
  - 3.8.2. 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 clauses 3.4, 3.5, 3.6, 3.7, 18.2 and 18.3
- 3.9. Without prejudice to any other clauses contained within these Terms, the Hirer shall inform the Employment Business in writing of any:
  - 3.9.1. oral or written complaint the Agency Worker makes to the Hirer which is or may be a complaint connected with rights under the AWR or otherwise; and
  - 3.9.2. written request for information relating to the Relevant Terms and Conditions that the Hirer 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 Hirer and the Hirer 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 Hirer's receipt of such a request in accordance with Regulation 16 of the AWR and the Hirer will provide the Employment Business with a copy of any such written statement.

- 3.10. The Hirer undertakes that it knows of no reason why it would be detrimental to the interests of the Agency Worker for the Agency Worker to fill the Assignment.
- 3.11. In the event of a reportable incident under RIDDOR involving an Agency Worker the Hirer agrees to notify the Employment Business as soon as reasonably practicable and to report any reportable incident under RIDDOR in accordance with RIDDOR reporting procedure as if it were the employer of the person who suffers injury, death or a dangerous occurrence. The Hirer acknowledges, notwithstanding this paragraph, that the Employment Business has no reporting obligation under RIDDOR save in so far a reportable incident occurs in premises controlled by the Employment Business.

#### **4. INFORMATION TO BE PROVIDED BY THE EMPLOYMENT BUSINESS TO THE HIRER**

- 4.1. When Introducing an Agency Worker to the Hirer the Employment Business shall inform the Hirer:

- 4.1.1. of the identity of the Agency Worker;
  - 4.1.2. that the Agency Worker has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment;
  - 4.1.3. that the Agency worker is willing to work in the Assignment;
  - 4.1.4. any notice period to terminate the Assignment;
  - 4.1.5. the intervals at which invoices shall be rendered to the Hirer by the Employment Business; and
  - 4.1.6. the Charges.
- 4.2. 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 Agency Worker is Introduced for an Assignment in the same position as one in which the Agency Worker had previously been supplied within the previous 5 business days and such information has already been given to the Hirer, unless the Hirer requests that the information be resubmitted.
- 4.3 The Employment Business agrees to search, in the Territory and within such timeframe as the Hirer may specify, for Workers for the Hirer as Agency Workers who meet the Hirer's stipulated minimum criteria for the Actual Vacancies.
- 4.5 In order to ensure compliance with the AWR 2010, the Employment Business will within seven days of receiving a written request from the Hirer provide it with details of:
- (a) the number of Agency Workers that it is currently supplying to the Hirer
  - (b) the parts of the Hirer's undertaking in which those Agency Workers are working; and
  - (c) the type of work those Agency Workers are carrying out,
- together with any other information which the Hirer may reasonably request in relation to any payments made by the Employment Business, its subcontractors or any other intermediaries to any Agency Worker.

## 5. TIMESHEETS

- 5.1. At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of 1 week or less) the Hirer shall sign the Employment Business' timesheet verifying the number of hours worked by the Agency Worker during that week.
- 5.2. Signature of the timesheet by the Hirer is confirmation of the number of hours worked. If the Hirer is unable to sign a timesheet produced for authentication by the Agency Worker because the Hirer disputes the hours claimed, the Hirer shall inform the Employment Business as soon as is reasonably practicable and shall cooperate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what hours, if any, was worked by the Agency Worker. Failure to sign the timesheet does not absolve the Hirer of its obligation to pay the Charges in respect of the hours worked.
- 5.3. The Hirer shall not be entitled to decline to sign a timesheet on the basis that it is dissatisfied with the work performed by the Agency Worker. In the event that the Hirer is dissatisfied with the Agency Worker the provisions of clause 10.0 below shall apply.

## 6. CHARGES

- 6.1 The Hirer agrees to pay the Charges as notified to and agreed with the Hirer. The Charges are calculated according to the number of hours worked by the Agency Worker (to the nearest quarter hour) and comprise the following:
  - 6.1.1. the Agency Worker's hourly rate of pay;
  - 6.1.2. an amount equal to any paid holiday leave to which the Agency Worker is entitled under the WTR or Statutory Holiday Pay calculated at least at 12.07% and, where applicable, the AWR and which is accrued during the course of an Assignment;



- 6.1.3. any other amounts to which the Agency Worker is entitled under the AWR, where applicable;
- 6.1.4. employer's National Insurance contributions;
- 6.1.5. any travel, hotel or other expenses as may have been agreed with the Hirer or, if there is no such agreement, such expenses as are reasonable; and
- 6.1.6. the Employment Business' commission, which is calculated as a percentage of the Agency Worker's hourly rate unless otherwise agreed.
- 6.2. The Hirer agrees that the minimum Assignment period shall be 7.5 hours.
- 6.3. The Employment Business reserves the right to vary the Charges agreed with the Hirer, by giving written notice to the Hirer:
  - 6.3.1 in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the AWR; and/or
  - 6.3.2 if there is any variation in the Relevant Terms and Conditions.
- 6.4. If the Hirer reduces or cancels bookings less than 4 hours before the commencement of an Assignment, the Employment Business reserves the right to make a charge equivalent to 4 hours being worked by each Agency Worker booked for an Assignment, at an hourly charge rate agreed for the booking.
- 6.5. The Charges are invoiced to the Hirer on a weekly basis and are payable within 14 days of the date of invoice. The Hirer agrees that in the event of non-payment of the invoice by the Hirer within 14 days the Hirer will indemnify and keep indemnified, on the indemnity basis, the Employment Business in respect of all costs, including legal costs, incurred by the Employment Business in respect of the recovery of the invoice whether they are incurred before or after judgment.
- 6.6. In addition to the Charges, the Hirer will pay the Employment Business an amount equal to any bonus the Hirer awards to the Agency Worker in accordance with clause 3.5 immediately following any such award and the Employment Business will pay any such bonus to the Agency Worker. For the avoidance of doubt, the Hirer will also pay an employer's National Insurance Contribution and the Employment Business' commission on the bonus (calculated using the same percentage rate as that used under clause 6.1.6) in addition to any bonus payable to the Agency Worker.
- 6.7. VAT is payable at the applicable rate on the entirety of the Charges and all sums payable under clause 6.5.
- 6.8. The Employment Business reserves the right to charge interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date.
- 6.9. No refunds are payable in respect of the Charges of the Employment Business.
- 6.10. Without prejudice to the above provisions, in the event that any Charges are not paid by the due date and therefore becomes overdue, all and any Charges incurred by the Hirer in respect of the Agency Worker or otherwise become immediately due to the Employment Business as a debt.
- 6.11. The Hirer's obligations under this clause 6 shall be performed without any right of the Hirer to invoke set-off, deductions, withholdings or other similar rights.

## **7. PAYMENT OF THE AGENCY WORKER**

- 7.1 The Employment Business assumes responsibility, where appropriate, for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Agency Worker pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003. For the avoidance of doubt, the Employment Business also assumes responsibility for the payment of paid leave required under the WTR.

## 8. TRANSFER FEES

### 8.1 Transfer Fees where a worker has been supplied

8.1.1 In the event of the Engagement by the Hirer of an Agency Worker supplied by the Employment Business for an Assignment either (1) directly or (2) pursuant to being supplied by another employment business, during the Assignment or within whichever is the longer of either:

- (a) 14 weeks from the start of the first Assignment (each new Assignment where there has been a break of more than 42 days (6 weeks) since the end of a previous Assignment shall also be considered to be the 'first Assignment' for these purposes); or
- (b) 8 weeks from the day after the last day the Agency Worker worked on the Assignment the Hirer shall be liable, subject to electing by giving 7 days prior notice, to either:
  - (i) **An extended period of hire** of the Agency Worker being 130 working days during which the Hirer shall pay the current hourly charge agreed for each hour the Agency Worker is so employed or supplied; or
  - (ii) **A Transfer Fee** calculated as follows: in accordance with Schedule 2 as a percentage of the Charges applicable during the first 12 months of the Engagement or, if the actual amount of the Charges is not known, the hourly charges agreed pursuant to clause 6 multiplied by 500. 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.

However, where the Hirer does not give such notice before the Agency Worker is Engaged the parties agree that the Transfer Fee shall be due.

### 8.2 INTRODUCTION FEES WHERE A WORKER IS INTRODUCED BUT NOT SUPPLIED

8.2.1 In the event that there is an Introduction of an Agency Worker to the Hirer which does not result in the supply of that Agency Worker by the Employment Business to the Hirer, but which leads to an Engagement of the Agency Worker by the Hirer either directly or pursuant to being supplied by another employment business within 12 months from the date of Introduction the Hirer shall be liable, subject to electing upon giving not less than 14 days' notice, to either:

- (a) **A period of hire** of the Agency Worker being 12 weeks during which the Hirer shall pay £25 per hour or the hourly charges agreed pursuant to clause 6.1 above for each hour the Agency Worker is so employed or supplied; or
- (b) **An Introduction Fee** calculated as follows: in accordance with Schedule 2 as a percentage of the Remuneration applicable during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the hourly charges agreed pursuant to clause 6.1 multiplied by 500. No refund of the Introduction Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due. However, where the Hirer does not give such notice before the Agency Worker is Engaged the parties agree that the Transfer Fee shall be due.

8.3 In the event that the Engagement of the Agency Worker is for a fixed term of less than 12 months, the fee in clause 8.1.1(ii) or 8.2.1(b), calculated as a percentage of the Remuneration, will apply pro-rata. If the Engagement is extended beyond the initial fixed term or if the Hirer re-engages the Agency Worker within 3 months of the termination of the first Engagement the Hirer shall be liable to pay a further fee based on the additional Remuneration applicable for the period of Engagement following the initial fixed term up to the termination of the second Engagement or the first anniversary of its commencement, whichever is sooner.

### 8.4 Inability to supply during the period of hire

8.4.1 If the Hirer elects for a period of hire, as set out in clauses 8.1.1 (i) or 8.2.1 (a), but before the end of such period Engages the Agency Worker supplied by the Employment Business either directly or pursuant to being supplied by another employment business or the Agency Worker chooses not to be supplied for the period of hire, the Transfer or Introduction Fee calculated in accordance with either 8.1.1(ii) or 8.2.1(b) may be charged, reduced by such percentage to reflect any period of hire already undertaken by the Agency Worker and paid for by the Hirer.

8.4.2 Where period(s) of absence due to illness or injury prevent the Agency Worker from being employed or supplied for 4 or more days, which shall be qualifying days for the purposes of Statutory Sick Pay (SSP), during the period of hire as set out above, the period of hire shall be extended by a period equivalent to the total period of absence. Where the Employment Business pays the Agency Worker SSP during the period of hire an equivalent amount shall be charged to and be payable by the Hirer in addition to the charges agreed pursuant to clause 6.

#### **8.5 Transfer Fees where there has been an Introduction to and Engagement by a Third Party**

8.5.1 In the event that an Agency Worker supplied to a Hirer is introduced by the Hirer to a third party which results in the Engagement of the Agency Worker by the third party during the Assignment or within whichever is the longer of either:

- (a) 14 weeks from the start of the first Assignment (each new assignment where there has been a break of more than 42 days (6 weeks) since the end of the previous Assignment shall also be considered to be the 'first Assignment' for these purposes); or
- (b) 8 weeks from the day after the last day the Agency Worker worked on the Assignment

The Hirer shall be liable to pay a Transfer Fee calculated in accordance with clause 8.1.1 (ii)

#### **8.6 Introduction Fees where there has been an Introduction but no Supply resulting in an Engagement by a Third Party**

8.6.1 In the event that there is an Introduction of a Agency Worker to the Hirer which does not result in the supply of that Agency Worker by the Employment Business to the Hirer, but the Agency Worker is introduced by the Hirer to a third party which results in the Engagement of the Agency Worker by the third party within 12 months from the date of Introduction the Hirer shall be liable, to an Introduction Fee calculated in accordance with clause 8.2.1 (b)

### **9. SUITABILITY CHECKS AND INFORMATION TO BE PROVIDED IN SPECIAL SITUATIONS**

9.1. Where:

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

9.1.2. in addition, where the Assignment involves working with, caring for or attending one or more Vulnerable Persons, the Employment Business will take all reasonably practicable steps to obtain and offer to provide copies to the Hirer of two references from persons who are not relatives of the Agency Worker and who have agreed that the references they provide may be disclosed to the Hirer;

and such other reasonably practicable steps as are required to confirm that the Agency Worker is suitable for the Assignment. If the Employment Business has taken all reasonably practicable steps to obtain the information above and has been unable to do so fully it shall inform the Hirer of the steps it has taken to obtain this information in any event.

9.2. The Hirer shall advise the Employment Business at the time of instructing the Employment Business to supply an Agency Worker whether during the course of the Assignment, the Agency Worker will be required to work with, care for or attend one or more Vulnerable Persons or engage in activity or otherwise be working in a

position covered by the Safeguarding Vulnerable Groups Act 2006 or the Protecting Vulnerable Groups (Scotland) Act 2007 as applicable.

- 9.3. The Hirer shall assist the Employment Business by providing any information required to allow the Employment Business to comply with its statutory obligations under the Safeguarding Vulnerable Group Act 2006 or the Protecting Vulnerable Groups (Scotland) Act 2007 as applicable and to allow the Employment Business to select a suitable Agency worker for the Assignment.
- 9.4. In particular in the event that the Hirer removes an Agency worker from an Assignment in circumstances which would require the Employment Business to provide information to the Independent Safeguarding Authority (or the equivalent authority) under the Safeguarding Vulnerable Groups Act 2006 or the Protecting Vulnerable Groups (Scotland) Act 2007, the Hirer will provide sufficient information to the Employment Business to allow it to discharge its statutory obligations.

## **10. UNSUITABILITY OF THE AGENCY WORKER**

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

10.1.1. within 4 hours of the Agency Worker commencing the Assignment where the Assignment is for more than 7 hours; or

10.1.2. within 2 hours for Assignments of 7 hours or less;

and provided that notification of the unsuitability of the Agency Worker is confirmed in writing to the Employment Business within 48 hours of the termination of the Assignment.

- 10.2. The Employment Business shall notify the Hirer immediately if it receives or otherwise obtains information which gives the Employment Business reasonable grounds to believe that the Agency Worker supplied to the Hirer is unsuitable for the Assignment and shall be entitled to terminate the Assignment forthwith without prior notice and without liability. Notwithstanding, the Hirer shall remain liable for all Charges incurred prior to the termination of the Assignment.
- 10.3. The Hirer shall notify the Employment Business immediately and without delay and in any event within one hour if the Agency Worker fails to attend work or has notified the Hirer that they are unable to attend work for any reason.

## **11. TERMINATION OF THE ASSIGNMENT**

- 11.1 The Employment Business or the Agency Worker may terminate an Assignment at any time without prior notice and without liability.
- 11.2 The Hirer may terminate the Assignment at any time without prior notice. The Employment Business will endeavour to find an alternative Assignment for the Agency Worker but if the Employment Business is unable to do so the Hirer will be liable for the Charges incurred to the date of termination plus an additional fee calculated as if the Agency Worker had worked for the Hirer for 7.5 hours.

## **12. CONFIDENTIALITY**

- 12.1. All information relating to an Agency Worker is confidential and subject to the Data Protection Laws as defined in clause 13 and is provided solely for the purpose of providing work-finding services to the Hirer. Such information must not be used for any other purpose nor divulged to any third party and the Hirer undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times.

- 12.2. The Employment Business undertakes to keep confidential all Relevant Terms and Conditions that the Hirer discloses to the Employment Business and not to use such information except for the purpose of compliance with the AWR (including, for the avoidance of doubt and without limitation, when dealing with any request for information or complaint made by any Agency Worker or any AWR Claim).
- 12.3. Information relating to the Employment Business' business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is kept in the public domain.
- 12.4 Each party undertakes that it shall not at any time, either alone or jointly with or on behalf of any person, directly or indirectly, use or disclose to any third party any Confidential Information other than:
- 12.4.1 to its legal advisors for the purposes of matters relating to this agreement;
  - 12.4.2 with the prior written consent of the other party;
  - 12.4.3 insofar as it has come into the public domain otherwise than by reason of disclosure by the offending party;
  - 12.4.5 insofar as required by law to do so.

### 13. DATA PROTECTION

13.1 The following definitions apply in this clause 13:

**Agreed Purposes:** providing work-finding services for the Hirer, including but not limited to the recruitment, management, payment and engagement of Agency Workers in accordance with the terms of this agreement.

**Controller, data controller, processor, data processor, data subject, personal data, processing and appropriate technical and organisational measures:** as set out in the Data Protection Legislation.

**Data Protection Legislation:**

- (a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- (b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the party is subject, which relates to the protection of personal data.

**EU GDPR:** the General Data Protection Regulation ((EU) 2016/679).

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**Permitted Recipients:** the parties to this agreement, the employees of each party and any third parties engaged to perform obligations in connection with this agreement.

**Shared Personal Data:** the personal data to be shared between the parties under these Terms including, but not limited to, personal data relating to each Agency Worker and personnel at the Employment Business and/or Hirer.

- 13.2 This clause sets out the framework for the sharing of personal data between the parties as data controllers. Each party acknowledges that one party (the **Data Discloser**) will regularly disclose to the other party (the **Data Recipient**) Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 13.3 Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.
- 13.4 The Hirer hereby acknowledges and confirms that it has read, understood and will adhere to the Data Protection Laws including but not limited to the provisions set out in Schedule 3 of these Terms. The Hirer shall communicate to the Employment Business upon receipt of, and prior to agreeing to, these Terms if it has any objections to Schedule 3. For the avoidance of any doubt, by agreeing to these terms the Hirer also agrees to Schedule 3 of these Terms.
- 13.5 Each party shall:

- (a) ensure that it has all necessary consents and notices in place to enable lawful transfer of the Shared Personal Data to the Data Recipient for the Agreed Purposes;
  - (b) give full information to any data subject whose personal data may be processed under this agreement of the nature such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
  - (c) process the Shared Personal Data only for the Agreed Purposes;
  - (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
  - (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by this agreement;
- (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and
  - (g) not transfer any personal data received from the Data Discloser outside the UK unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.

13.6 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

- (h) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
- (i) promptly inform the other party about the receipt of any data subject access request;
- (j) provide the other party with reasonable assistance in complying with any data subject access request;
- (k) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;
- (l) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (m) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (n) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data;
- (o) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- (p) maintain complete and accurate records and information to demonstrate its compliance with this clause 13; and
- (q) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

13.7 Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

## 14. INTELLECTUAL PROPERTY RIGHTS

14.1 All copyright, trademarks, patents and other intellectual property rights deriving from the Assignment shall belong to the Hirer. Accordingly the Employment Business shall use its reasonable endeavours to ensure that the Agency Worker shall execute all such documents and do all such acts in order to give effect to the Hirer's rights pursuant to this clause.

## 15. LIABILITY

- 15.1. Whilst reasonable efforts are made by the Employment Business to give satisfaction to the Hirer by ensuring reasonable standards of skill, integrity and reliability from the Agency Worker and to provide the same in accordance with the Assignment details as provided by the Hirer, no liability is accepted by the Employment Business for any loss, expense, damage or delay arising from any failure to provide any Agency Worker for all or part of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Agency Worker or if the Agency Worker terminates the Assignment for any reason. For the avoidance of doubt, the Employment Business does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.
- 15.2. Agency Workers supplied by the Employment Business pursuant to these Terms are engaged under contracts for services. They are not the employees of the Employment Business and are deemed to be under the supervision and direction of the Hirer from the time they report to take up duties and for the duration of the Assignment. The Hirer agrees to be responsible for all acts, errors or omissions of the Agency Worker, whether wilful, negligent or otherwise as though the Agency Worker was on the payroll of the Hirer.
- 15.3. The Hirer shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Agency Worker and about any requirements imposed by law or by any professional body, which must be satisfied if the Agency Worker is to fill the Assignment.
- 15.4. The Hirer will also comply in all respects with all statutory provisions as are, in force from time to time including, for the avoidance of doubt, but not limited to the Data Protection Laws, the WTR, Health and Safety at work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999 (as amended), the Driving Legislation, by-laws, codes of practice and legal requirements to which the Hirer is ordinarily subject in respect of the Hirer's own staff (excluding the matters specifically mentioned in clause 7 above), including in particular the provisions of adequate Employer's and Public Liability Insurance cover for the Agency Worker during all Assignments.
- 15.5. The Hirer shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business arising out of any Assignment or arising out of any non-compliance with, and/or as a result of any breach of, these Terms by the Hirer.
- 15.6. The Hirer shall inform the Employment Business in writing of any AWR Claim which comes to the notice of the Hirer as soon as possible but no later than 7 calendar days from the day on which any such AWR Claim comes to the notice of the Hirer.
- 15.7. If the Agency Worker brings, or threatens to bring any AWR Claim, the Hirer undertakes to take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business and at the Hirer's own cost, to avoid, dispute, resist, mitigate, compromise or defend any such AWR Claim and to appeal against any judgment given in respect thereof.

## **16. SPECIAL SITUATIONS**

Where an Agency Worker is required by law, or any professional body, to have any qualifications or authorisations to work on an Assignment or an Assignment involves caring for or attending one or more persons under the age of 18 or any person who by reason or age, infirmity or who is otherwise in need of care or attention, the Employment Business will take all reasonably practicable steps to obtain and offer to provide copies of any relevant qualifications or authorisations, two references from persons not related to the Agency Worker who have agreed that the references they provide may be disclosed to the Hirer and all other reasonably practicable steps to confirm that the Agency Worker is suitable for the Assignment. If the Employment Business is unable to do any of the above, it will inform the Hirer of the steps taken to obtain this information in any event.

## **17. NOTICES**

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

## **18. SEVERABILITY**

If any of the provisions of these Terms shall be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the remaining Terms, which shall continue to be valid to the fullest extent permitted by applicable laws.

## **19. ADDENDUMS (IF ANY)**

Addendums (if any) attached to these Terms are deemed to form part of these Terms.

## **20. ACCEPTANCE OF THESE TERMS OF BUSINESS**

20.1 Acceptance of these terms is deemed in accordance with clause 2.1 above. Signing of these terms of business is not considered a pre-condition for their acceptance. If the Hirer requires amendments or addendums to be made to these terms of business, then all alterations or addendums must be agreed in writing by both the Hirer and the Employment Business.

20.2 It is the Hirer's responsibility to ensure that someone is suitably authorised to accept these terms and conditions

## **21. GOVERNING LAW AND JURISDICTION**

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

## **22. TEMPORARY DRIVER CLAUSES**

22.1. All the above provisions shall apply to Temporary Drivers and/or Mobile Workers save where inconsistent with the provisions in the following sub-clauses in which case the sub-clauses shall prevail.

22.2 The Hirer will assist the Employment Business in complying with the Employment Business's 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 Hirer will not do anything to cause the Employment Business to be in breach of its obligations under such legislation.

22.3 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 Hirer:

22.3.1 holds a complete, accurate and up-to-date operator's licence under the Act throughout the period of any Assignment and the Hirer hereby warrants that it holds such a licence;

22.3.2 will comply with all of its obligations for obtaining and maintaining such operator's licence under the Act; and

22.3.3 will upon request permit the Employment Business to inspect and take copies of the Hirer's operator's licence.

22.4 The Hirer 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.

22.5 The Hirer 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 Agency Worker, all duties under health and safety regulations, road traffic and liability insurances including fully comprehensive insurance for the vehicle and its contents. The Hirer agrees to allow the Employment Business to inspect and take copies of any relevant policies of insurance and any other relevant documentation.

- 22.6 The Hirer will take all reasonable steps and give any reasonable instructions to the Agency Worker 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.
- 22.7 To assist the Hirer in complying with the relevant provisions of the Goods Vehicle (Licensing of Operators) Act 1995, the Employment Business agrees to provide the Hirer upon request with such information as is available to the Employment Business about any driving Assignments carried out by the Temporary Driver in the seven days immediately preceding the commencement of an Assignment with the Hirer provided the Temporary Driver shall have worked for a client of the Employment Business during those seven days.
- 22.8 The Hirer agrees to pay the Employment Business's charges in respect of the number of hours worked by the Temporary Driver. For the avoidance of doubt for Mobile Workers involved in operations subject to EU Drivers Hours Rules the number of hours worked during the week comprises of the total number of hours Working Time and the total number of hours spent as Periods of Availability as defined under the Road Transport (Working Time) Regulations 2005.
- 22.9 For Temporary Drivers who are Mobile Workers working in operations subject to EU Drivers Hours Rules the Hirer will assist the Employment Business in complying with the Employment Businesses' duties under the Road Transport (Working Time) Regulations 2005 by supplying relevant information about the Assignment requested by the Employment Business including copies of tachograph charts for Temporary Drivers. Furthermore the Hirer agrees to do nothing to cause the Employment Business to be in breach of its obligations under the Road Transport (Working Time) Regulations 2005.
- 22.10 The Hirer undertakes that transport time schedules shall conform to the requirements of EU Drivers Hours Rules and the Road Transport (Working Time) Regulations 2005.

\_\_\_\_\_  
**Signed for and on behalf of the Hirer**

\_\_\_\_\_ [print name here]

**I confirm I am authorised to sign these Terms for and on behalf of**

\_\_\_\_\_ **“the Hirer”**

\_\_\_\_\_  
Date

## **SCHEDULE 1: “COMPARABLE EMPLOYEE”, “QUALIFYING PERIOD” AND “TEMPORARY WORK AGENCY”**

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

- (a) works for and under the supervision of the Hirer and is engaged in the same or broadly similar work as the Agency Worker having regard, where relevant, to whether the employee and Agency Worker have a similar level of qualification and skill; and
- (b) works or is based at the same establishment as the Agency Worker or, where there is no comparable employee working or based at that establishment who satisfies the requirements of (a) above, works or is based at a different establishment and satisfies those requirements.

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

- 1. the Agency Worker has started working during an assignment and there is a break, either between assignments or during an assignment, when the Agency Worker is not working;
- 2. the break is:
  - 2.1. for any reason and not more than six Calendar Weeks;
  - 2.2. wholly due to the fact that the Agency Worker is incapable of working in consequence of sickness or injury and the break is 28 Calendar Weeks or less; paragraph 2.3 does not apply; and, if required to do so by the Employment Business, the Agency Worker has provided such written medical evidence as may reasonably be required;
  - 2.3. related to pregnancy, childbirth or maternity and is at a time in a protected period, being a period beginning at the start of the pregnancy and ending at the end of the 26 weeks beginning with childbirth (being the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy) or, if earlier, when the Agency Worker returns to work;
  - 2.4. wholly for the purpose of taking time off or leave, whether statutory or contractual, to which the Agency Worker is otherwise entitled which is:
    - 2.4.1. ordinary, compulsory or additional maternity leave;
    - 2.4.2. ordinary or additional adoption leave;
    - 2.4.3. ordinary or additional paternity leave;
    - 2.4.4. time off or other leave not listed in paragraphs 2.4.1, 2.4.2, or 2.4.3 above; or
    - 2.4.5. for more than one of the reasons listed in paragraph's 2.4.1, 2.4.2, 2.4.3 to 2.4.4 above;
  - 2.5. wholly due to the fact that the Agency Worker is required to attend at any place in pursuance to being summoned for service as a juror and the break is 28 Calendar Weeks or less;
  - 2.6. wholly due to a temporary cessation in the Hirer's requirement for any worker to be present at the establishment and work in a particular role for a pre-determined period of time according to the established custom and practices of the Hirer;
  - 2.7. wholly due to a strike, lock-out or other industrial action at the Hirer's establishment; or
  - 2.8. wholly due to more than one of the reasons listed in paragraphs 2.2, 2.3, 2.4,2.5,2.6 or 2.7; and
- 3. the Agency Worker returns to work in the same role with the Hirer, any weeks during which the Agency Worker worked for the Hirer before the break shall be carried forward and treated as counting towards the Qualifying Period with any weeks during which the Agency Worker works for the Hirer after the break. In addition, when calculating the number of weeks during which the Agency Worker has worked, where the Agency Worker has started working in a role during an Assignment and is unable to continue working for a reason described in paragraph 2.3 or 2.4.1, or 2.4.2 or 2.4.3, for the period that is covered by one or more such reasons, the Agency Worker shall be deemed to be working in that role with the Hirer for the original intended duration or likely duration of the relevant Assignment, whichever is the longer. For the avoidance of doubt, time spent by the Agency Worker working during an assignment before 1 October 2011 does not count for the purpose of the definition of “Qualifying Period”.

“Temporary Work Agency” means as defined in Regulation 4 of the Agency Workers Regulations being a person engaged in the economic activity, public or private, whether or not operating for profit, and whether or not carrying on such activity in conjunction with others, of:

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

Notwithstanding paragraph (b) of this definition a person is not a Temporary Work Agency if the person is engaged in economic activity of paying for, or receiving or forwarding payments for, the services of individuals regardless of whether the individuals are supplied to work for hirers. For the purpose of this definition, a "hirer" means a person engaged in economic activity, public or private, whether or not operating for profit, to whom individuals are supplied, to work temporarily for and under the supervision and direction of that person.

SCHEDULE 2: TABLE OF FEES

|                           |              |                   |                   |              |
|---------------------------|--------------|-------------------|-------------------|--------------|
| Table Of Fees (%)         |              |                   |                   |              |
|                           |              |                   |                   |              |
| Gross Annual Remuneration | £0 - £25,000 | £25,001 - £30,000 | £30,001 - £50,000 | £50,000 Plus |
| % Fee payable             | 20           | 22.5              | 25                | 30           |

All fees subject to VAT

### SCHEDULE 3 : PROCESSING, PERSONAL DATA AND DATA SUBJECTS

|  |   |
|--|---|
| <b>The subject matter and duration of the Processing</b> | The subject matter of and duration of the processing is as described in this Agreement.   |
| <b>The nature and purpose of the Processing</b>          | <p>The nature of the processing is as described in this Agreement and includes the following processing activities:</p> <ul style="list-style-type: none"> <li>• Hosting, storage and backup of Personal Data;</li> <li>• Accessing Personal Data in relation to the Services;</li> <li>• Application and implementation of security measures and controls; and</li> <li>• Analysis, monitoring and reporting in relation to the Services.</li> </ul> <p>The purpose of the hirer processing the Personal Data is to utilise the temporary workers under the terms of the agreement</p>   |
| <b>The type of Personal Data being Processed</b>         | <ul style="list-style-type: none"> <li>• Personal details (such as full name, date of birth, marital status, gender, images, passport details, visa copies, details of identity card and other identifying numbers, nationality, immigration status);</li> <li>• Background and experience details (such as education, skill set, qualifications, references, employment history, curriculum vitae);</li> <li>• Job application data (such as application, interview notes, recruitment decision, offer details);</li> <li>• Employment details (such as employment contract, business/department, job role, business activities);</li> <li>• Opinions, communications and work/business-related outputs;</li> <li>• Work-related travel data (such as flights and hotel details);</li> <li>• Professional development and performance data;</li> <li>• Attendance/absence details;</li> <li>• Disciplinary information, complaints and grievances about or raised by personnel;</li> <li>• the commission or alleged commission of any offence or any proceedings for any offence committed or alleged to have been committed by an individual, the disposal of such proceedings or the sentence of any court in such proceedings (for example, as part of criminal and other background checks).</li> </ul> |
| <b>The categories of Data Subjects</b>                   | <p>The categories of data subjects are:</p> <ul style="list-style-type: none"> <li>• current, former and prospective employees and personnel</li> <li>• current, former and prospective clients, suppliers and contacts;</li> <li>• current and former employees and personnel of clients, suppliers and contacts; and</li> <li>• other data subjects of the Personal Data processed in connection with the provision of the Services.</li> </ul>   |