

CONTRACT WITH THE AGENCY WORKER

1. DEFINITIONS

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

“Agency Worker”	means name of Agency Worker;
“Assignment”	means the period during which the Agency Worker is supplied to render services to the Client;
“Client”	means the person, firm or corporate body requiring the services of the Agency Worker together with any subsidiary or associated company as defined by the Companies Act 1985;
“Employment Business”	means Bain and Gray of 3 Kingly Street, London, W1B 5PD;
“Period of Extended Hire”	means any additional period that the Hirer wishes the Agency Worker to be supplied for beyond the duration of the original Assignment or series of assignments as an alternative to paying a Transfer Fee;
“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 the Schedule to these Terms;
“Relevant Period”	means (a) the period of 8 weeks commencing on the day after the last day on which the Agency Worker worked for the Hirer having been supplied by the Employment Business; or (b) the period of 14 weeks commencing on the first day on which the Agency Worker worked for the Hirer having been supplied by Employment Business or 14 weeks from the first day of the most recent Assignment where there has been a break of more than 6 weeks (42 days) since any previous assignment.

1.2. Unless the context otherwise requires, references to the singular include the plural.

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

2. THE CONTRACT

- 2.1. These Terms constitute a contract for services between the Employment Business and the Agency Worker and they govern all Assignments undertaken by the Agency Worker. However, no contract shall exist between the Employment Business and the Agency Worker between Assignments.
- 2.2. For the avoidance of doubt, these Terms shall not give rise to a contract of employment between the Employment Business and the Agency Worker. The Agency Worker is engaged as a self-employed worker, although the Employment Business is required to make statutory deductions from the Agency Worker’s remuneration in accordance with clause 4.1.
- 2.3. No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Employment Business and the Agency Worker and set out in writing and a copy of the varied terms is given to the Agency Worker stating the date on or after which such varied terms shall apply.
- 2.4. 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 Client.

3. ASSIGNMENTS

- 3.1. The Employment Business will endeavour to obtain suitable Assignments for the Agency Worker to work as an administrative support. The Agency Worker shall not be obliged to accept an Assignment offered by the Employment Business.
- 3.2. The Agency Worker acknowledges that the nature of agency work means that there may be periods when no suitable work is available and agrees: that the suitability of the work to be offered shall be determined solely by the Employment Business; that the Employment Business shall incur no liability to the Agency Worker should it fail to offer opportunities to work in the above category or in any other category; and that no contract shall exist between the Agency Worker and the Employment Business during periods when the Agency Worker is not working on an Assignment.

- 3.3 At the same time as an Assignment is offered to the Agency Worker the Employment Business shall inform the Agency Worker of the identity of the Client, and if applicable the nature of their business; the date the work is to commence and the duration or likely duration of the work; the type of work, location and hours during which the Agency Worker would be required to work; the rate of remuneration that will be paid and any expenses payable by or to the Agency Worker; and any risks to health and safety known to the Client in relation to the Assignment and the steps the Client has taken to prevent or control such risks. In addition the Employment Business shall inform the Agency Worker what experience, training, qualifications and any authorisation required by law or a professional body the Client considers necessary or which are required by law to work in the Assignment.
- 3.4 Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any public or Bank holiday) following save where the Agency Worker is being offered an Assignment in the same position as one in which the Agency Worker had previously been supplied within the previous five business days and such information has already been given to the Agency Worker.
- 3.5 For the purpose of calculating the average number of weekly hours worked by the Agency Worker on an Assignment, the start date for the relevant averaging period under the Working Time Regulations shall be the date on which the Agency Worker commences the first Assignment.
- 3.6 If, before the first Assignment, during the course of an Assignment or within the Relevant Period the Client wishes to employ the Agency Worker direct or through another employment business, the Agency Worker acknowledges that the Employment Business will be entitled either to charge the Client a fee or to agree an extension of the hiring period with the Client at the end of which the Agency Worker may be engaged directly by the Client or through another employment business without further charge to the Client. In addition the Employment Business will be entitled to charge a fee to the Client if the Client introduces the Agency Worker to a third party who subsequently engages the Agency Worker within the Relevant Period.
- 3.7 If the Agency Worker has completed the Qualifying Period on the start date of the relevant Assignment or following completion of the Qualifying Period during the relevant Assignment, and if the Agency Worker is entitled to any terms and conditions relating to the duration of working time, night work, rest periods and/or rest breaks under the Agency Workers Regulations which are different and preferential to rights and entitlements relating to the same under the Working Time Regulations, any such terms and conditions will be as set out in the relevant Assignment Details Form or any variation to the relevant Assignment Details Form (as appropriate).
- 3.8 If the Agency Worker considers that s/he has not or may not have received equal treatment under the Agency Workers Regulations, the Agency Worker may raise this in writing with the Employment Business setting out as fully as possible the basis of his/her concerns.

4 REMUNERATION

- 4.1 The Employment Business shall pay to the Agency Worker remuneration calculated at a minimum hourly rate of £ 7.00 being the minimum rate of remuneration that the Employment Business reasonably expects to achieve, for all hours worked. The actual rate will be notified on a per Assignment basis, for each hour worked during an Assignment (to the nearest quarter hour) to be paid weekly in arrears, subject to deductions in respect of PAYE pursuant to Sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003 and Class 1 National Insurance Contributions and any other deductions which the Employment Business may be required by law to make.
- 4.2 If the Agency Worker has completed the Qualifying Period on the start date of the relevant Assignment or following completion of the Qualifying Period during the relevant Assignment, the Employment Business shall pay to the Agency Worker:
- 4.2.1 the Actual QP Rate of Pay; and
- 4.2.2 the Emoluments (if any).
- 4.3 Which will be notified on a per Assignment basis and as set out in the relevant Assignment Details Form or any variation to the relevant Assignment Details Form.
- 4.4 Subject to any statutory entitlement under the relevant legislation, the Agency Worker is not entitled to receive payment from the Employment Business or Clients for time not spent on Assignment, whether in respect of holidays, illness or absence for any other reason unless otherwise agreed.

5 STATUTORY LEAVE

- 5.1 For the purposes of calculating entitlement to paid annual leave pursuant to the Working Time Regulations 1998 under this clause, the leave year commences on the date that the Agency Worker starts an Assignment.
- 5.2 The annual leave granted under these terms will always be the statutory minimum as it is from time to time. Under the Working Time Regulations 1998 (as amended), the Agency Worker is entitled to annual leave as follows:
For work carried out from 1 April 2009 onwards: 5.6 weeks.
If the statutory minimum leave is subsequently decreased or increased then entitlement to leave under this clause will be decreased or increased so as to be set at the statutory minimum as it applies to any period in which work is carried out.
- 5.3 All entitlement to leave must be taken during the course of the leave year in which it accrues and none may be carried forward to the next year.
- 5.4 Where an Agency Worker wishes to take paid leave during the course of an assignment s/he should notify the Employment Business of the dates of his/her intended absence giving notice of at least twice the length of the period of leave that s/he wishes to take. In certain circumstances the Employment Business may give counter-notice to the Agency Worker to postpone or reduce the amount of leave that the Agency Worker wishes to take and in such circumstances the Employment Business will inform the Agency Worker in writing giving at least the same length of notice as the period of leave that it wishes to postpone or reduce it by. Bain and Gray Ltd.

- 5.5 Entitlement to payment for leave accrues in proportion to the amount of time worked continuously by the Agency Worker on Assignment during the leave year. The amount of payment which the Agency Worker will receive in respect of periods of annual leave taken during the course of an Assignment will be calculated in accordance with and paid in proportion to the number of hours which the Agency Worker has worked on Assignment.5.5
- 5.6 In the course of any Assignment during the first leave year the Agency Worker is entitled to request leave at the rate of one-twelfth of the Agency Worker's total holiday entitlement in each month of the leave year.
- 5.7 Where a Bank Holiday or other Public Holiday falls during an Assignment and the Agency Worker does not work on that day, then subject to the worker having accrued entitlement to payment for leave in accordance with clause 5.5, that day shall count as part of the Agency Worker's paid annual leave entitlement.
- 5.8 Where this contract is terminated by either party and a P45 is requested, the Agency Worker shall be entitled to a payment in lieu of any untaken leave where the amount of leave taken is less than the amount accrued in accordance with clause 5.
- 5.9 None of the provisions of this clause regarding the statutory entitlement to paid leave shall Affect the Agency Worker's status as a self-employed worker.

6 SICKNESS ABSENCE

- 6.1 The Agency Worker may be eligible for Statutory Sick Pay provided that s/he meets the relevant statutory criteria.
- 6.2 For the purposes of the Statutory Sick Pay scheme there is one qualifying day per week during the course of an assignment and that qualifying day shall be the Wednesday in every week.

7 TIME SHEETS

- 7.1 At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of one week or less or is completed before the end of a week) the Agency Worker shall deliver to the Employment Business a time sheet duly completed to indicate the number of hours worked during the preceding week (or such lesser period) and signed by an authorised representative of the Client.
- 7.2 Subject to clause 7.3 The Employment Business shall pay the Agency Worker for all hours worked regardless of whether the Employment Business has received payment from the Client for those hours.
- 7.3 Where the Agency Worker fails to submit a properly authenticated time sheet the Employment Business shall, in a timely fashion, conduct further investigations into the hours claimed by the Agency Worker and the reasons that the Client has refused to sign a timesheet in respect of those hours. This may delay any payment due to the Agency Worker. The Employment Business shall make no payment to the Agency Worker for hours not worked.
- 7.4 For the avoidance of doubt and for the purposes of the Working Time Regulations, the Agency Worker's working time shall only consist of those periods during which s/he is carrying out activities or duties for the Client as part of the Assignment. Time spent travelling to the Client's premises; lunch breaks and other rest breaks shall not count as part of the Agency Worker's working time for these purposes.

8 CONDUCT OF ASSIGNMENTS

- 8.1 The Agency Worker is not obliged to accept any Assignment offered by the Employment Business but if s/he does so, during every Assignment and afterwards where appropriate, s/he will: –
- a) Co-operate with the Client's reasonable instructions and accept the direction, supervision and control of any responsible person in the Client's organisation;
 - b) Observe any relevant rules and regulations of the Client's establishment (including normal hours of work) to which attention has been drawn or which the Agency Worker might reasonably be expected to ascertain;
 - c) Take all reasonable steps to safeguard his or her own health and safety and that of any other person who may be present or be affected by his or her actions on the Assignment and comply with the Health and Safety policies and procedures of the Client;
 - d) Not engage in any conduct detrimental to the interests of the Client;
 - e) Not at any time divulge to any person, nor use for his or her own or any other person's benefit, any confidential information relating to the Client's or the Employment Business' employees, business affairs, transactions or finances.
- 8.2 If the Agency Worker is unable for any reason to attend work during the course of an Assignment s/he should inform the Employment Business within one hour of the commencement of the Assignment or shift.
- 8.3 If the Agency Worker accepts any Assignment offered by the Employment Business, as soon as possible prior to the commencement of each such Assignment and during each Assignment (as appropriate) and at any time at the Employment Business' request, the Agency Worker undertakes to:
- 8.3.1 Inform the Employment Business of any Calendar Weeks between 1 October 2011 and prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment in which the Agency Worker has worked in the same or a similar role with the relevant Hirer via any third party and which the Agency Worker believes count or may count toward the Qualifying Period;
 - 8.3.2 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; and

- 8.3.3 Inform the Employment Business if, since 1 October 2011, s/he has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment: completed two or more assignments with the Hirer; completed at least one assignment with the Hirer and one or more earlier assignments with any member of the Hirer's Group; and/or 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.
- 8.4 If, either before or during the course of an Assignment, the Agency Worker becomes aware of any reason why s/he may not be suitable for an Assignment, s/he shall notify the Employment Business without delay.
- 8.5 The Agency Worker acknowledges that any breach of his/her obligations set out in this clause may cause the Employment Business to suffer loss and that the Employment Business reserves the right to recover such losses from the Agency Worker.

9 TERMINATION

- 9.1 The Employment Business or the Client may terminate the Agency Worker's Assignment at any time without prior notice or liability.
- 9.2 The Agency Worker may terminate an Assignment at any time without prior notice or liability.
- 9.3 If the Agency Worker does not inform the Client or the Employment Business should they be unable to attend work during the course of an assignment this will be treated as termination of the assignment by the Agency Worker in accordance with clause 9.2 unless the Agency Worker can show that exceptional circumstances prevented him or her from complying with clause 8.2.
- 9.4 If the Agency Worker is absent during the course of an assignment and the contract has not been otherwise terminated under clauses 9.1, 9.2 or 9.3 above the employment business will be entitled to terminate the contract in accordance with clause 9.1 if the work to which the absent worker was assigned is no longer available for the Agency Worker.
- 9.5 If the Agency Worker does not report to the Employment Business to notify his/her availability for work for a period of three weeks, the Employment Business will forward his/her P45 to his/her last known address.

10 INTELLECTUAL PROPERTY RIGHTS

The Agency Worker acknowledges that all copyright, trademarks, patents and other intellectual property rights deriving from services carried out by him/her for the Hirer during the Assignment shall belong to the Hirer. Accordingly the Agency Worker shall execute all such documents and do all such acts as the Employment Business shall from time to time require in order to give effect to its rights pursuant to this clause.

11 CONFIDENTIALITY

11.1 In order to protect the confidentiality and trade secrets of any Hirer and the Employment Business and without prejudice to every other duty to keep secret all information given to it or gained in confidence the Agency Worker agrees as follows:

- 11.1.1 Not at any time, whether during or after an Assignment (unless expressly so authorised by the Hirer or the Employment Business as a necessary part of the performance of its duties) to disclose to any person or to make use of any of the trade secrets or the Confidential Information of the Hirer or the Employment Business with the exception of information already in the public domain;
- 11.1.2 To deliver up to the Hirer or the Employment Business (as directed) at the end of each Assignment all documents and other materials belonging to the Hirer (and all copies) which are in its possession including documents and other materials created by him/her during the course of the Assignment; and
- 11.1.3 Not at any time to make any copy, abstract, summary or précis of the whole or any part of any document or other material belonging to the Hirer except when required to do so in the course of its duties under an Assignment in which event any such item shall belong to the Hirer or the Employment Business as appropriate.

12 DATA PROTECTION

The Agency Worker warrants that in relation to these Terms, s/he shall comply strictly with all provisions applicable to him/her under the Data Protection Laws and shall not do or permit to be done anything which might cause the Employment Business or the Hirer to breach any Data Protection Laws.

13 LAW

These Terms are governed by the law of [*England & Wales/Scotland/ Northern Ireland] and are subject to the exclusive jurisdiction of the Courts of [*England & Wales/Scotland/Northern Ireland].

Signed by the Agency Worker _____

[print name here] _____

Date _____