



AND

(3) YOU - [TEMPORARY WORKER]

TERMS OF ENGAGEMENT FOR TEMPORARY WORKERS

Drafted in line with



THIS AGREEMENT is made on
BETWEEN:

- (1) **The Temp Agency** incorporated and registered in Scotland whose office is at 2 Commercial Street, Edinburgh EH6 6JA (**Employment Business**).
- (2) Your name and address (**Temporary Worker**).

IT IS AGREED as follows:

1 INTERPRETATION

1.1 In these terms of engagement, the following definitions apply:

"Assignment" means the temporary services to be carried out by the Temporary Worker for the Client as notified to the Temporary Worker from time to time.

"AWR 2010" means the Agency Workers Regulations 2010.

"Business Day" means a day other than Saturday, Sundays and any bank, public or statutory holiday.

"Client" means the person, firm, partnership, or corporate body with any subsidiary (as defined in s1159 Companies Act 2006) or associated person, firm or corporate body to whom the temporary worker is introduced.

"Conduct Regulations 2003" means the Conduct of Employment Agencies and Employment Business Regulations 2003 as amended.

"Confidential Information" means information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of the Client, the Employment Business for the time being confidential to the Client, the Employment Business [and trade secrets including, without limitation, technical data and know-how relating to the business of the Client or the Employment Business or any of its [or their] suppliers, customers, agents, distributors, shareholders, management or business contacts, including in particular (by way of illustration only and without limitation) and including (but not limited to) information that the Temporary Worker creates, develops, receives or obtains in connection with the Assignment, whether or not such information (if in anything other than oral form) is marked confidential.

"Other Qualifying Period Payment" means any remuneration payable to the Temporary Worker (other than the Qualifying Period Rate of Pay), which is not excluded by virtue of regulation 6 of the AWR 2010, such as any overtime, shift premium, commission or any bonus, incentive or rewards which are directly attributable to the amount or quality of work done by a Temporary Worker and are not linked to a financial participation scheme (as defined by the AWR 2010).

"Qualifying Period" means 12 continuous calendar weeks, as defined in regulation 7 of the AWR 2010, subject always to regulations 8 and 9 of the AWR 2010.

"Qualifying Period Rate of Pay" means the rate of pay that will be paid to the Temporary Worker on completion of the Qualifying Period, if this rate is higher than the Rate of Pay. Such rate will be paid for each hour worked during an Assignment (to the nearest quarter hour) weekly in arrears, subject to any deductions that the Employment Business is required to make by law and to any deductions that the Temporary Worker has specifically agreed can be made.

"Rate of Pay" means the rate of pay that will be paid to the Temporary Worker prior to completion of the Qualifying Period. Such rate will be paid for each hour worked during an Assignment (to the nearest quarter hour) weekly in arrears, subject to any deductions that the Employment Business is required to make by law and to any deductions which the Temporary Worker has specifically agreed can be made.

"Relevant Period" shall have the meaning set out in regulation 10(5) and (6) of the Conduct Regulations 2003.

"Relevant Terms and Conditions" means the relevant terms and conditions as defined in regulation 6 of the AWR 2010 that apply once the Temporary Worker has completed the Qualifying Period.

"Temporary Assignment Details Form" means written confirmation of the detail of a particular Assignment to be given to the Temporary Worker on acceptance of that Assignment.

"Temporary Worker" means a worker introduced and supplied by the Employment Business to the Client to provide services to the Client not as an employee of the Client, who is deemed to be an agency worker for the purposes of regulation 3 of the AWR 2010.

"Temporary Work Agency" means shall have the meaning set out in regulation 4(1) of the AWR 2010.

"Vulnerable Person" means shall have the meaning set out in regulation 2 of the Conduct Regulations 2003.

"WTR 1998" means the Working Time Regulations 1998.

1.2 A reference to a **"company"** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.3 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.

1.5 A reference to a particular law or regulation is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

2 THE AGREEMENT

- 2.1 These terms of engagement constitute a contract for services between the Employment Business and the Temporary Worker (together with the Temporary Assignment Details Form) for the supply of services to the Client and shall govern all Assignments undertaken by the Temporary Worker (including, for the avoidance of doubt, where the Temporary Worker undertakes an Assignment without having signed these terms). No contract shall exist between the Employment Business and the Temporary Worker between Assignments.
- 2.2 For the purposes of the Conduct Regulations 2003, the Employment Business acts as an Employment Business in relation to the Introduction and supply of the Temporary Worker to the Client.

3 ASSIGNMENTS

- 3.1 The Employment Business will endeavour to obtain suitable Assignments for the Temporary Worker to perform the type of work in **Hospitality**. The Employment Business is not obliged to offer an Assignment to the Temporary Worker and the Temporary Worker shall not be obliged to accept any Assignment offered by the Employment Business.
- 3.2 The Temporary Worker acknowledges that the nature of temporary work means that there may be periods when no suitable work is available. The Temporary Worker agrees that suitability of an Assignment shall be determined solely by the Employment Business and that the Employment Business shall incur no liability to the Temporary Worker should it fail to offer Assignments of the type of work specified above or any other work.
- 3.3 Prior to, or at the same time that the Employment Business makes an offer of an Assignment to the Temporary Worker he will be given the following Required Information, which will usually be set out in Temporary Assignment Details Form ("**the Required Information**"):
- 3.3.1 the identity of the Client, and if applicable the nature of its business;
 - 3.3.2 the date the Assignment is to commence and the duration or likely duration of the Assignment;
 - 3.3.3 the position which the Client seeks to fill, including the type of work the Temporary Worker would be required to do, the location at which, and the hours during which, the Temporary Worker would be required to work;
 - 3.3.4 the Rate of Pay and any expenses payable by or to the Temporary Worker;
 - 3.3.5 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; and
 - 3.3.6 the experience, training, qualifications and any authorisation which the Client considers are necessary or which are required by law or a professional body for the Temporary Worker to possess in order to work in the Assignment.
- 3.4 Where the Required Information is not given in paper form or by electronic means, the Employment Business shall confirm it in writing or electronically as soon as possible and in any event no later than the end of the third Business Day following the day on which the Assignment was offered to the Temporary Worker.
- 3.5 Unless the Temporary Worker requests otherwise, clause 3.3 will not apply where the Temporary Worker is being offered an Assignment by the Employment Business to work in the same position for a Client as one in which the Temporary Worker has previously been supplied within the previous five business days and the Required Information (with the exception of the date or likely duration of the Assignment) is the same as that already given to the Temporary Worker.
- 3.6 Subject to clause 3.5 and clause 3.7, where the Assignment is intended to last for five consecutive Business Days or less and the Required Information has previously been given to the Temporary Worker and remains unchanged, the Employment Business shall provide written confirmation of the identity of the Client and the likely duration of the Assignment.
- 3.7 Where the provisions of clause 3.6 have been met but the Assignment extends beyond the intended five consecutive Business Days, the Employment Business shall provide the remaining Required Information to the Temporary Worker in paper or electronic form within eight Business Days of the start of the Assignment or by the end of the Assignment, if sooner.
- 3.8 If the Temporary Worker has completed the Qualifying Period on the start date of the relevant Assignment or completes the Qualifying Period during the relevant Assignment, the Temporary Worker will be informed of the Qualifying Period Rate of Pay if different from the Rate of Pay, together with the Other Qualifying Period Payments and the other Relevant Terms and Conditions to which the Temporary Worker is now entitled under the AWR 2010.
- 3.9 If the Temporary Worker considers that they have not received the Relevant Terms and Conditions on completion of the Qualifying Period, the Temporary Worker may raise this in writing with the Employment Business setting out as fully as possible the basis of their concerns. The Employment Business shall, within 28 days of receiving such request, provide the Temporary Worker with a written statement in response.

4 TEMPORARY WORKER'S OBLIGATIONS

- 4.1 The Temporary Worker is not obliged to accept any Assignment offered by the Employment Business. If the Temporary Worker does accept an Assignment, the Temporary Worker shall:
- 4.1.1 co-operate with the Client's reasonable instructions and accept the direction, supervision and control of any responsible person in the Client's organisation;
 - 4.1.2 observe any relevant rules and regulations of the Client's organisation (including normal hours of work) of which the Temporary Worker has been informed or of which the Temporary Worker should be reasonably aware;
 - 4.1.3 co-operate with the Employment Business in the completion and renewal of all mandatory check, including in relation to the Temporary Worker's right to work in the United Kingdom;
 - 4.1.4 where the Assignment involves working with any Vulnerable Persons, provide the

Employment Business with copies of any relevant qualifications or authorisations including an up-to-date Disclosure and Barring Service certificate and two references which are from persons who are not related to the Temporary Worker;]

- 4.1.5 take all reasonable steps to safeguard their own health and safety and that of any other person who may be present or be affected by their actions on the Assignment and comply with the health and safety policies of the Client;
 - 4.1.6 not engage in any conduct detrimental to the interests of the Employment Business or the Client;
 - 4.1.7 comply with all relevant statutes, laws, regulations and codes of practice from time to time in force in the performance of the Assignment and applicable to the Client's business.
- 4.2 If the Temporary Worker accepts any Assignment offered by the Employment Business, as soon as possible before the commencement of each such Assignment and during each Assignment (as appropriate) and at any time at the Employment Business' request, the Temporary Worker undertakes to:
- 4.2.1 inform the Employment Business of any calendar weeks whether before the date of commencement of the relevant Assignment or during the relevant Assignment in which the Temporary Worker has worked in the same or a similar role with the Client via any third party (including another Temporary Work Agency);
 - 4.2.2 provide the Employment Business with all the details of such work, including (without limitation) details of when, where and the period(s) during which such work was undertaken, the role performed and any other details requested by the Employment Business; and
 - 4.2.3 inform the Employment Business if before the date of the commencement of the relevant Assignment the Temporary Worker has:
 - 4.2.3.1 completed two or more assignments with the Client;
 - 4.2.3.2 completed at least one assignment with the Client and one or more assignments with a member of the Client's Group; or
 - 4.2.3.3 worked in more than two roles during an assignment with the Client and on at least two occasions has worked in a role that was not the same role as the previous role.
- 4.3 If the Temporary Worker is unable for any reason to attend work during the course of an Assignment, they should first inform the Employment Business at least [one] hour before their normal start time [to enable alternative arrangements to be made]. If this is not possible, the Temporary Worker should inform the Client and then the Employment Business as soon as possible.
- 4.4 If, either before or during the course of an Assignment, the Temporary Worker becomes aware of any reason why they may not be suitable for an Assignment, they shall notify the Employment Business without delay.
- 4.5 **If, before or during an Assignment or during the Relevant Period, the Hirer wishes to Engage the Agency Worker directly or through another employment business, the Agency Worker acknowledges that the Employment Business will be entitled either to charge the Hirer a Transfer Fee or to agree a Period of Extended Hire with the Hirer at the end of which the Agency Worker may be Engaged directly by the Hirer or through another employment business without further charge to the Hirer. In addition the Employment Business will be entitled to charge a Transfer Fee to the Hirer if the Hirer introduces the Agency Worker to a third party (other than another employment business) who subsequently Engages the Agency Worker, directly or indirectly, before or during an Assignment or within the Relevant Period.**

5 PAY

- 5.1 Subject to the Temporary Worker submitting properly authorised time sheets in accordance with clause 6:
- 5.1.1 the Employment Business shall pay the Rate of Pay to the Temporary Worker until the Temporary Worker completes the Qualifying Period. The Rate of Pay will be set out in the relevant Temporary Assignment Details Form for a particular Assignment.
 - 5.1.2 if the Temporary 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 Temporary Worker:
 - 5.1.2.1 the Qualifying Period Rate of Pay; and
 - 5.1.2.2 the Other Qualifying Period Payments,which will be notified to the Temporary Worker in writing.
 - 5.2 Where the Relevant Terms and Conditions contain a performance-related bonus for which the Temporary Worker may be eligible on completion of the Qualifying Period, the Temporary Worker will comply with any requirements of the Employment Business or the Client relating to the assessment of the Temporary Worker's performance for the purpose of determining entitlement to such bonus and the amount of any such bonus. If the Temporary Worker satisfies the relevant assessment criteria, the Employment Business will pay the Temporary Worker the bonus less any deductions that the employment business is required to make by law at the relevant time.]
 - 5.3 Subject to any applicable statutory entitlement and to clause 7 and clause 8, the Temporary Worker is not entitled to receive payment from the Employment Business or the Client for time not spent working on the Assignment, unless otherwise agreed.

6 TIME SHEETS

- 6.1 At the end of each week of an Assignment (or at the end of an Assignment if it is for a period of one week or less or is completed before the end of a week) the Temporary Worker shall deliver to the Employment

Business a completed time sheet indicating the number of hours worked during the preceding week (or such lesser period) and signed by an authorised representative of the Client.

- 6.2 Subject to clause 6.3, the Employment Business shall pay the Temporary Worker for all hours worked on a [weekly] basis regardless of whether the Employment Business has received payment from the Client for those hours.
- 6.3 Where the Temporary Worker fails to submit a properly authorised time sheet, or the Client refuses to sign a timesheet for the hours worked, any payment due to the Temporary Worker may be delayed while the Employment Business investigates (in a timely fashion) what hours, if any, were worked by the Temporary Worker. The Employment Business shall make no payment to the Temporary Worker for hours not worked.
- 6.4 For the avoidance of doubt and for the purposes of the WTR 1998, the Temporary Worker's working time shall only consist of those periods during which they are carrying out activities or duties for the Client as part of the Assignment. Time spent travelling to the Client's premises (with the exception of time spent travelling between two or more premises of the Client), lunch breaks and other rest breaks shall not count as part of the Temporary Worker's working time for these purposes.
- 6.5 The Temporary Worker acknowledges and accepts that it could be a criminal offence under the Fraud Act 2006 to falsify any time sheet, for example by claiming payment for hours that were not actually worked.

7 ANNUAL LEAVE

- 7.1 Subject to clause 7.2, the Temporary Worker is entitled to the equivalent of 5.6 weeks' paid holiday during each holiday year under the WTR's. This includes all bank holiday entitlements and is calculated in accordance with and paid in proportion to the number of hours that the Temporary Worker has worked on an Assignment during the holiday year. The Employment Business' holiday year runs between 1st April and 31st March. If an Assignment starts or finishes part way through the holiday year, the Temporary Worker's holiday entitlement during that year shall be calculated on a pro-rata basis.
- 7.2 On completion of the Qualifying Period, the Temporary Worker may be entitled to paid and/or unpaid annual leave in addition to the Temporary Worker's entitlement under clause 7.1. In those circumstances, the Employment Business will inform the Temporary Worker in writing of any such entitlement.
- 7.3 All entitlement to annual leave must be taken during the course of the holiday year in which it accrues and no untaken holiday can be carried forward to the next holiday year.
- 7.4 At the end of each month or when the Temporary Worker wishes to take some or all of the paid leave to which the Temporary Worker is entitled, the Temporary Worker should notify the Employment Business in writing in advance of the dates of their intended absence. The amount of notice should be at least twice the length of the period of leave that the Temporary Worker wishes to take. In certain circumstances the Employment Business may give counter-notice to the Temporary Worker to postpone or reduce the amount of leave that he wishes to take and in such circumstances the Employment Business will inform the Temporary Worker in writing giving at least the same length of notice as the period of leave that that has been requested. Public or bank holidays not worked will not be paid unless the Temporary Worker notifies the Employment Business that he wishes to take them as part of the Temporary Worker's statutory annual entitlement.
- 7.5 Subject to clause 7.2, in the course of any Assignment during the first holiday year, the Temporary Worker is entitled to request leave at the rate of one-twelfth of the Temporary Worker's total holiday entitlement in each month of the holiday year.
- 7.6 At the end of the Assignment the Temporary Worker shall be entitled to be paid in lieu of accrued but untaken holiday for the holiday year in which termination takes place.
- 7.7 If the Temporary Worker has taken more holiday than their accrued entitlement at the end of the Assignment, the Employment Business shall be entitled to deduct the appropriate amount from any payments due to the Temporary Worker.

8 SICKNESS ABSENCE

- 8.1 If the Temporary Worker is absent from work for any reason, they must notify The Temp Agency of the reason for their absence as soon as possible but no later than 3 hours prior to the first day of absence.
- 8.2 If the Temporary Worker satisfies the qualifying conditions laid down by law, they may be entitled to receive Statutory Sick Pay ("SSP") at the prevailing rate in respect of any period of sickness or injury during the Assignment. The Temporary Worker will not be entitled to any other payments during such period.

9 TERMINATION

- 9.1 The Employment Business, the Client or the Temporary Worker may terminate the Assignment at any time without prior notice or liability.
- 9.2 The Temporary Worker acknowledges that the continuation of an Assignment is subject to and dependent on the continuation of the agreement entered into between the Employment Business and the Client. If that agreement is terminated for any reason, the Assignment shall cease with immediate effect without liability to the Temporary Worker, except for payment for work done up to the date of termination of the Assignment.
- 9.3 Unless exceptional circumstances apply, the Temporary Worker's failure to inform the Client or the Employment Business of their inability to attend work as required by clause 4.3 will be treated as termination of the Assignment by the Temporary Worker.
- 9.4 If the Temporary Worker is absent during the course of an Assignment and the Assignment has not otherwise been terminated, the Employment Business will be entitled to terminate the Assignment in accordance with clause 9.1 if the work to which the Temporary Worker was assigned is no longer available.

10 CONFIDENTIALITY

- 10.1 In order to protect the confidentiality and trade secrets of the Employment Business and the Client, the Temporary Worker agrees not at any time:
- 10.1.1 whether during or after an Assignment (unless expressly so authorised by the Client or the Employment Business as a necessary part of the performance of their duties), to disclose to any person or to make use of any of the trade secrets or the Confidential Information of the Client or the Employment Business; or
 - 10.1.2 to make any copy, abstract or summary of the whole or any part of any document or other material belonging to the Client or the Employment Business except when required to do so in the course of the Temporary Worker's duties under an Assignment, in which circumstances such copy abstract or summary would belong to the Client or the Employment Business, as appropriate.
- 10.2 The restriction in clause 10.1 does not apply to:
- 10.2.1 any use or disclosure authorised by the Client or the Employment Business or as required by law;
 - 10.2.2 any information which is already in, or comes into, the public domain otherwise than through the Temporary Worker's unauthorised disclosure; or
 - 10.2.3 the making of a protected disclosure within the meaning of section 43A of the Employment Rights Act 1996.
- 10.3 At the end of each Assignment or on request, the Temporary Worker agrees to deliver up to the Client or the Employment Business (as directed) all documents (including copies), ID cards, swipe cards, equipment, passwords, pass codes and other materials belonging to the Client which are in its possession, including any data produced, maintained or stored on the Client's computer systems or other electronic equipment.

11 DATA PROTECTION

The Temporary Worker consents to the Employment Business and the Client (and any other intermediary involved in supplying the services of the Temporary Worker to the Client) holding and processing data relating to them for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" as defined in the Data Protection Act 1998.

12 WARRANTIES AND INDEMNITIES

- 12.1 The Temporary Worker warrants that:
- 12.1.1 the information supplied to the Employment Business in any application documents is correct;
 - 12.1.2 the Temporary Worker has the experience, training, qualifications and any authorisation which the Client considers are necessary or which are required by law or by any professional body for the Temporary Worker to possess in order to perform the Assignment;
 - 12.1.3 the Temporary Worker is not prevented by any other agreement, arrangement, restriction (including, without limitation, a restriction in favour of any employment agency, employment business or client) or any other reason, from fulfilling the Temporary Worker's obligations under this agreement; and
 - 12.1.4 the Temporary Worker has valid and subsisting leave to enter and remain in the United Kingdom for the duration of this agreement and is not (in relation to such leave) subject to any conditions which may preclude or have an adverse effect on the Assignment.

13 NOTICES

All notices which are required to be given in accordance with these terms of engagement shall be in writing and may be delivered personally or by first classed prepaid post to the registered office, or last known address of the party upon whom the notice is to be served, or by email. 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, when it is sent.

14 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 14.1 A person who is not a party to this agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 except where such rights are expressly granted.
- 14.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement is not subject to the consent of any person that is not a party to this agreement.

15 GOVERNING LAW AND JURISDICTION

This agreement and any dispute or claim arising out of or in connection with it is subject to the laws of Scotland, England and Wales.

You will be required to visit the office and sign a declaration sheet, which states your agreement to the above Terms of Engagement. It is recommended that you print a copy of the above Terms and keep them for future reference.