

# TEMPORARY STAFF SERVICES – TERMS OF BUSINESS WITH CLIENT DANIEL OWEN LIMITED

## 1. DEFINITIONS

1.1. In this Agreement the following definitions apply:

**"Agency Worker"** means an agency worker as defined in reg. 3 of the AWR;

**"Assignment"** means an assignment during which the Temporary Worker is supplied by the Employment Business to render services to the Client or the Client's client;

**"AWR"** means the Agency Workers Regulations 2010;

**"Client"** means the party to this Agreement to whom the Temporary Worker is introduced to render services;

**"Day 1 Rights"** means rights under Regs. 12 and 13 of the AWR which a hirer must apply to the Agency Worker from the first day of an Assignment;

**"Employment Business"** Daniel Owen Limited, company number 2142070 whose registered office is Hadwyn House, Field Road, Reading RG1 6AP;

**"Engagement"** means the engagement, employment, use or other arrangement to receive the services of a Temporary Worker on a permanent, temporary or ad hoc basis, whether under a contract of service or for services, an agency, license, franchise or partnership arrangement, and whether directly or indirectly (including without limitation through a limited company or other intermediary of which the Temporary Worker is an officer or employee, or through any other employment business); or any other engagement other than under this Agreement or otherwise through the Employment Business; and **"Engage"** shall have a corresponding meaning;

**"Information"** - the information the Employment Business needs from the Client namely:

(a) **"Requirement Information"** - sufficient information to enable the Employment Business to seek a potential Temporary Worker including the role or position to be filled and date for commencement; nature of the work and/or position required; working conditions and location; proposed salary and/or other payment terms; any issues relating to health and safety and steps taken by the Client to prevent or control risk or information which may affect a decision to accept work; experience and qualifications required for the potential Temporary Worker; details of any requirements of law or professional bodies and confirmation that the Client has all necessary licences and consents;

(b) **"Previous Work Information"** – information as to whether the Temporary Worker that the Employment Business supplies or proposes to supply to the Client has previously worked for the Client and if so, details of such previous assignment / engagement of the Temporary Worker including without limitation dates the Temporary Worker worked for the Client, the role he performed and the reasons the assignment / engagement ended;

(c) **"Comparator Terms Information"** - information to enable the Employment Business to determine the pay and basic working and employment conditions as set out in reg. 6 of the AWR that are ordinarily in force within the Client's business and which would have applied had the Temporary Worker been recruited directly by the Client on the first day of their assignment to do the same job;

**"Intermediary"** has the meaning given to it in clause 11;

**"Introduce"** means the supply of a curriculum vitae or other information (either orally or in writing) which identifies an individual or is used to identify an individual, or the referral of that individual, whether or not that individual was previously known to the person supplied with the information or to the person to whom the individual was referred; and **"Introduction"** shall have a corresponding meaning;

**"Introduction Fee"** means (1) an amount agreed to by the parties, or (2) in the event of no agreement within a reasonable time, an amount equal to 30% of the Remuneration applicable during the first 12 months of the Engagement of the Temporary Worker by the Client or third party, as appropriate, or (3) if such Engagement is less than 12 months, or if the Remuneration is not known or not disclosed to the Employment Business after 7 days of its request, the hourly charges agreed to for the Temporary Worker (or if not agreed, the normal hourly charges charged by the Employment Business for the Temporary Worker) multiplied by 550; plus in all cases VAT where applicable;

**"ITEPA"** means the Income Tax (Earnings and Pensions) Act 2003

**"Off-Payroll"** means the amendments to Chapters 8 and 10, Part 2 of ITEPA via the Finance Act 2020;

**"Regulations"** the Conduct of Employment Agencies and Employment Businesses Regulations 2003 as amended from time to time;

**"Relevant Period"** means, in a situation where (pursuant to reg. 32(9) of the Regulations or otherwise) the Regulations do not apply, the Restriction Period, and otherwise, the relevant period as defined in paragraph 10(5) of the Regulations;

**"Restriction Period"** means 12 months following the Introduction of the Temporary Worker by the Employment Business to the Client;

**"Remuneration"** (1) in the case of a Temporary Worker Engaged by the Client (or third party, as the case may be) under a contract of employment, the starting annual salary of the Temporary Worker and the taxable value of all benefits for that year, and shall include without limitation all annualised gross income guaranteed to the Temporary Worker guaranteed and/or reasonably anticipated bonus and commission earnings, allowances, inducement payments, employer pension contributions, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Temporary Worker in relation to such Engagement for the first year of Engagement, and where a company car is provided, a notional amount of £5,000 will be added to the salary; or (2) in the case of a Temporary Worker Engaged by the Client (or third party as the case may be) other than under a contract of employment or service agreement, means the annualised total guaranteed and/or reasonably anticipated payments, excluding reimbursement of out-of-pocket expenses and VAT, receivable by the Temporary Worker in respect of such Engagement in the first year of the Engagement;

**"Reg. 5 Rights"** means rights to the Reg. 5 Terms;

**"Reg. 5 Terms"** means the terms and conditions to which an Agency Worker is entitled under Reg. 5 of the AWR;

**"SDS"** means status determination statement as defined by section 61N of ITEPA;

**"Temporary Worker"** means the individual (whether himself acting as a sole trader or not) who is Introduced by the Employment Business to render services to the Client or the Client's client.

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

1.3. The headings contained in this Agreement are for convenience only and do not affect its interpretation.

1.4. A reference to a 'person' includes any individual, firm, company, association, corporation or other body corporate or government agency.

## 2. THE CONTRACT

2.1. This Agreement governs the Introduction and supply of Temporary Workers by the Employment Business to the Client and (once the Client has received this document) is accepted by the Client by virtue of any act by the Client of accepting or requesting services from the Employment Business, or using in any way information from the Employment Business relating to a proposed Temporary Worker, including without limitation a request by the Client for an Introduction to the Client of a proposed Temporary Worker by the Employment Business, or by virtue of an interview of a proposed Temporary Worker by the Client or by a third party to whom the proposed Temporary Worker was Introduced by the Client.

2.2. Unless otherwise agreed in writing by a director of the Employment Business, this Agreement prevails over any terms of business or purchase conditions put forward by the Client.

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

2.4. It is acknowledged and agreed that these terms and conditions shall supersede all prior representations, arrangements, understandings and agreements between the parties relating to the subject matter hereof and shall constitute the entire and complete agreement and understanding between them. The Client acknowledges and agrees that no representations, arrangements, understandings or agreements (whether written or oral) made by or on behalf of the Employment Business have been relied upon other than those expressly set out or referred to in this Agreement.

- 2.5. The Client irrevocably and unconditionally waives any right that it may have to claim damages or to any other remedy for any misrepresentation arrangement understanding or agreement not contained in this Agreement or for any breach of any representation not contained in this Agreement (except in the case of fraud).
- 2.6. Each of the clauses and sub-clauses of this Agreement shall be construed as separate and severable. If any clause or sub-clause or parts thereof is or becomes illegal, void or invalid it shall not affect the legality and validity of the other clauses or sub-clauses and parts thereof.
- 2.7. The Employment Business engages the Temporary Worker under a contract for services, and for the avoidance of doubt, this Agreement shall not give rise to a contract of employment or any partnership between the Employment Business and the Temporary Worker, or between the Employment Business and the Client.
- 2.8. The Employment Business will operate as an employment business as defined in sections 13(1) and (3) of the Employment Agencies Act 1973 as amended from time to time.

### 3. CHARGES

- 3.1. The Client agrees to pay such hourly or daily charges of the Employment Business as shall be notified to and agreed with the Client. In the case of hourly charges, these are calculated according to the number of hours worked by the Temporary Worker (to the nearest quarter hour). In the case of daily charges, these are calculated on the basis of 7.5 hour days. The charges comprise the Temporary Worker's pay, the Employment Business' commission, and, if relevant, employer's National Insurance contributions. The Employment Business is entitled to reimbursement of any travel, hotel or other expenses as may have been agreed with the Client or, if there is no such agreement, such expenses as are reasonable. VAT, if applicable, is payable on the entirety of these charges. The Client agrees to pay all sums due under this Agreement and no deduction shall be made by the Client in respect of any set-off or counter-claim howsoever arising.
- 3.2. The Employment Business shall not be obliged to refund the Client in respect of mistakes made by the Client or the Temporary Worker in respect of the hours/days worked recorded on timesheets, once the Temporary Worker is paid. However, the Employment Business shall use reasonable endeavours to recover such amounts from the Temporary Worker, and if successful shall make the relevant refund to the Client.
- 3.3. The Client shall pay the Employment Business for all work performed by the Temporary Worker.
- 3.4. The charges are invoiced to the Client on a weekly basis and are payable within fourteen days. The Employment Business reserves the right to charge statutory interest and compensation on any overdue amounts (including overdue Introduction Fees) from the due date until the date of payment (both before and after any judgement), at the rates defined in The Late Payment of Commercial Debts (Interest) Act 1998 and any subsequent amendments thereto, together with all costs incurred in the process of collecting the debt (including without limitation court fees, expenses, credit insurers' charges and legal costs). Failure by the Client to ensure payment of all invoices rendered and fees payable by the time stated will be classed as a breach of the contract and the Employment Business shall have the right to suspend its performance of the contract and withdraw the services of the Temporary Worker without prior notice and no time or indulgence granted by the Employment Business to the Client shall prejudice any right or remedy which the Employment Business may have in any manner whatsoever. The Employment Business will not be liable in any way whatsoever for any loss or damage sustained by the Client or any other persons through withdrawal of any Temporary Worker.
- 3.5. There are no rebates payable in respect of the charges of the Employment Business.
- 3.6. The minimum period of hire shall be a period of not less than seven hours, or one day. The minimum hire period shall commence on the date and at the time the Temporary Worker reports to the site in question.
- 3.7. Should an order be placed either orally or in writing by the Client and as a result of that order Temporary Workers are instructed to report to a particular site and thereafter having reported such Temporary Workers are not engaged by the Client then the Employment Business shall be entitled to a payment equal to the charge that would have been paid in accordance with the minimum hire charge for each and every Temporary Worker affected.

- 3.8. Unless the Employment Business has agreed in writing (in which case the charges shall be increased by the amount of the deduction), the Client may not deduct from the charges any CITB levy.

### 4. TIME SHEETS

- 4.1. 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 the week) the Client (or a person authorised by the Client) shall sign the Employment Business's time sheet verifying the number of hours or days worked by the Temporary Worker during that week.
- 4.2. Signature of the time sheet by the Client (or a person authorised by the Client or holding themselves out as being authorised by the Client) indicates satisfaction with the services provided by the Temporary Worker and confirmation of the number of hours or days worked. If the Client does not agree with the time recorded on the timesheet, it shall amend as necessary and sign the timesheet. Failure to sign the time sheet does not absolve the Client's obligation to pay the charges in respect of the hours or days worked as specified on the timesheet.
- 4.3. The Client shall not be entitled to decline to sign a time sheet on the basis that it is dissatisfied with the work performed by the Temporary Worker. In cases of unsuitable work the Client should apply the provisions of clause 8 (Termination) below.
- 4.4. The Client agrees to ensure safe return of such time sheets to the Employment Business's offices by 17:00 hours on the Monday following the period 00:01 hours Saturday and ending 24:00 hours Friday. If the Client fails for any reason to do this the Employment Business shall be entitled to calculate the number of hours or days worked which shall be deemed to be accepted by the Client and the Client shall pay the Employment Business for the number of hours or days so calculated.

### 5. PAYMENT OF THE TEMPORARY WORKER

- 5.1. The Employment Business assumes responsibility for paying the Temporary Worker and where appropriate, for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Temporary Worker pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003 where such sections apply, and in no circumstances shall the Client make payment to the Temporary Worker directly.
- 5.2. The Employment Business shall be responsible for payment of the Temporary Worker's paid annual leave, if any. The Employment Business shall seek the Client's approval (which shall not be unreasonably withheld) for the Temporary Worker to suspend the services to allow holiday to be taken.

### 6. INTRODUCTION FEES

- 6.1. Subject to clauses 6.2 and 6.3 below, the Employment Business shall be entitled to charge the Client an Introduction Fee, if:
  - 6.1.1. during the Relevant Period, a Temporary Worker is Engaged by the Client other than as supplied by the Employment Business under this Agreement; or
  - 6.1.2. during the Restriction Period, a person Introduced by the Employment Business to the Client as a potential Temporary Worker (but not supplied to the Client under this Agreement) is Engaged by the Client other than as supplied by the Employment Business under this Agreement; or
  - 6.1.3. during the Relevant Period, a Temporary Worker is Engaged by a third party (or any associated company of that third party as defined by s.256 of the Companies Act 2006) to which third party the Temporary Worker was Introduced by the Client, other than as supplied by the Employment Business; or
  - 6.1.4. during the Restriction Period, a person Introduced by the Employment Business to the Client as a potential Temporary Worker (but not supplied to the Client under this Agreement) is Engaged by a third party (or associated company of that third party as defined by s.256 of the Companies Act 2006) to which third party that person was Introduced by the Client, other than as supplied by the Employment Business.
- 6.2. If the Regulations apply to the supply or proposed supply in question, in respect of the events described in clauses 6.1.1 and 6.1.2, or either of them, the Client may at any time before, on the commencement of, or during the term of an Assignment, elect by notice to the Employment Business that such clauses, or either of them, shall not apply and that the Client undertakes to Engage the Temporary Worker, or potential Temporary

Worker, as appropriate, in the case of the event described under clause 6.1.2 for an Assignment lasting at least 6 months, and in the case of the event described in clause 6.1.1 for a 6 month extension of the Assignment from the date the Client gives notice of the intended Engagement.

- 6.3. Subject to clause 6.4, if the Client makes the election in accordance with clause 6.2 above and, provided it is due to no fault of the Employment Business, fails to Engage the specified Temporary Worker for an Assignment in accordance with that clause, the Client shall immediately make a payment, recoverable as a debt, to the Employment Business equal to the Introduction Fee that would otherwise have been chargeable had the election not been made.
- 6.4. In respect of clause 6.3, if the Client opts for an extended period of hire, but before the end of such period the Client (or third party as the case may be) Engages the relevant Temporary Worker or the Temporary Worker chooses not to be supplied for all or some of the extended period of hire, the Introduction Fee may be charged, reduced by such percentage to reflect the period of extended hire already undertaken by the Temporary Worker and paid for by the Client.
- 6.5. Where period(s) of absence due to illness or injury prevent the Temporary 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 Temporary Worker SSP during the period of hire an equivalent amount shall be charged to and be payable by the Client in addition to the charges agreed pursuant to clause 3.1.
- 6.6. The Client becomes liable for the Introduction Fee on the commencement date of the relevant Engagement. No refund of the Introduction Fee is payable in any circumstances.
- 6.7. For the avoidance of doubt, where the Employment Business has introduced a Temporary Worker to the Client, the Client's or any third party's decision to Engage the Temporary Worker based on or resulting from the use of social media shall not disentitle the Employment Business to the Introduction Fee.
- 6.8. This clause 6 shall survive the termination of this Agreement.

## **7. INFORMATION OBLIGATIONS and AUTHORITY**

- 7.1. To enable the Employment Business to comply with its obligations under the Regulations, the Client shall as soon as possible provide the Requirement Information together with any additional information the Employment Business may require, and prior to an Assignment notify the Employment Business of any additional information that may affect the information already provided or which may be relevant to the decision of the Temporary Worker to accept the Assignment.
- 7.2. The Client is responsible to check that a Temporary Worker is suitable for the Assignment and shall take up its own references and asylum and immigration checks to ensure that the Temporary Worker has the right to perform the Assignment in the UK.
- 7.3. The Client shall not integrate the Temporary Worker into its workforce or treat the Temporary Worker as an employee or do any act or thing towards the Temporary Worker which may be regarded as the act of an employer towards an employee, for any purpose, but not so that this shall prejudice the Client's obligations in relation to health and safety, the AWR, or other specific obligations under this Agreement.
- 7.4. Subject to Clause 12 the Client shall comply with the AWR and shall comply with the provisions of the Appendix.
- 7.5. Unless expressly withdrawn by notice in writing in respect of any specific position(s), the Client hereby gives the Employment Business authority to find work-seekers for positions it has notified the Employment Business it is seeking to fill, and to issue or cause to be issued advertisements about such positions, as required by regulation 27(2)(b) of the Regulations.

## **8. LIABILITY**

- 8.1. Whilst every reasonable effort is made by the Employment Business to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from Temporary Workers and further to provide them in accordance with the Client's requirements, it is for the Client to satisfy itself as to the Temporary Worker's overall capability to satisfactorily perform the services during the interview process, and the Employment Business is not liable for any loss, expense, damage or delay arising from any failure to provide any Temporary Worker for all or part of the period of booking or

from the negligence, dishonesty, misconduct or lack of skill of the Temporary Worker.

- 8.2. Subject to clause 8.3 below, the Employment Business only accepts liability (1) for the Client's direct losses arising out of or in connection with the Employment Business being in breach of this Agreement or of any statutory duty, and (2) in tort solely for the Client's direct losses arising out of or in connection with the Employment Business's negligent acts or omissions in providing employment business services under this Agreement.
- 8.3. The Employment Business shall not have any liability to the Client under or in connection with this Agreement howsoever arising (including but not limited to negligence) in respect of loss of profits or contract or anticipated savings or for special, indirect or consequential loss or damage, or for any increased costs or expenses, and its total liability under clause 8.2 shall not exceed in aggregate £50,000. These exclusions and limitations in this clause 8 shall not apply to personal injury, including death, caused by the negligence of the Employment Business, or any other liability which cannot by law be limited or excluded.
- 8.4. Subject to clause 12 Temporary Workers are deemed to be under the supervision, direction and control of the Client from the time they report to take up duties and for the duration of the Assignment. The Client agrees to be responsible for all acts, errors or omissions of the Temporary Worker, whether wilful, negligent or otherwise as though he was on the payroll of the Client. The Client will also comply in all respects with all statutes including, for the avoidance of doubt, the Working Time Regulations, Health and Safety At Work Act etc, by-laws, codes of practice and legal requirements to which the Client is ordinarily subject in respect of the Client's own staff (excluding the matters specifically mentioned in Clause 5 (Payment of the Temporary Worker) above), including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Temporary Worker during all Assignments.
- 8.5. The Client shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Temporary Worker and about any requirements imposed by law or by any professional body, which must be satisfied if the Temporary Worker is to fill the Assignment. The Client will assist the Employment Business in complying with the Employment Business' duties under the Working Time Regulations by supplying any relevant information about the Assignment requested by the Employment Business and the Client will not do anything to cause the Employment Business to be in breach of its obligations under these Regulations. Where the Client requires or may require the services of a Temporary Worker for more than 48 hours in any week, the Client must notify the Employment Business of this requirement before the commencement of that week.
- 8.6. The Client undertakes that it knows of no reason why it would be detrimental to the interests of the Temporary Worker for the Temporary Worker to fill the Assignment.
- 8.7. The Client undertakes not to request the supply of a Temporary Worker to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by someone who has been transferred by the Client to perform the duties of the person on strike or taking official industrial action.
- 8.8. The Client shall indemnify and keep indemnified the Employment Business against any costs, claims or liabilities incurred by the Employment Business arising out of any act or omission by the Client or any claim by a third party (including without limitation a Temporary Worker) or arising out of any non-compliance with, or as a result of any breach of, this Agreement by the Client.

## **9. TERMINATION**

- 9.1. The Client shall notify any unsatisfactory performance of a Temporary Worker promptly to the Employment Business in writing. The Client is deemed to be satisfied with the services performed unless written notice is received by the Employment Business, and the Client is liable to pay for all time worked by the Temporary Worker to the date of the notice as indicated by the timesheets.
- 9.2. Subject to clause 12 the Client undertakes to supervise the Temporary Worker sufficiently to ensure the Client's satisfaction with the Temporary Worker's standards of workmanship. Subject to clause 8.1, if the Client reasonably considers that the services of the Temporary Worker are unsatisfactory, the Client may terminate the Assignment either by instructing the Temporary Worker to leave the Assignment immediately, or by directing the Employment Business to remove the Temporary Worker.

Provided that notification of the unsuitability of the Temporary Worker is confirmed in writing to the Employment Business within 48 hours of the termination of the Assignment, the Employment Business may, in such circumstances, reduce or cancel the charges for the time worked by that Temporary Worker, provided that the Assignment terminates:

- 9.2.1. within four hours of the Temporary Worker commencing the Assignment where the booking is for more than seven hours; or
- 9.2.2. within two hours for bookings of seven hours or less.
- 9.3. Any of the Client, the Employment Business or the Temporary Worker may terminate an Assignment at any time without prior notice and without liability for such termination.
- 9.4. The Client shall notify the Employment Business immediately and without delay and in any event within 24 hours if the Temporary Worker fails to attend work or notifies the Client that the Temporary Worker is unable to attend work for any reason.

## 10. GENERAL

- 10.1. These Terms are governed by the law of England & Wales and are subject to the exclusive jurisdiction of the Courts of England & Wales.
- 10.2. These Terms are between the Employment Business and the Client as principals and are not assignable without the Employment Business' consent.
- 10.3. Where a worker is to be supplied via an Intermediary which is a company, the Employment Business will normally have received a notice from the worker and the Intermediary agreeing that the Regulations will not apply to a proposed Assignment. Accordingly by reason of this clause the Client acknowledges that the Employment Business has informed it of such agreement in accordance with the Regulations, unless informed otherwise.

## 11. TEMPORARY WORKERS PROVIDED THROUGH INTERMEDIARY PERSONS

- 11.1. Where the Employment Business engages a limited company, partnership or sole trader (the "Intermediary") which in turn engages the individual workers, to provide those workers to the Client to perform the services, in respect of such Assignments any reference in this Agreement to a Temporary Worker shall include the Intermediary, subject to the following provisions:
  - 11.1.1. the word 'individual' in the definition of Introduce shall include the Intermediary;
  - 11.1.2. the definition of Temporary Worker in clause 1.1 shall be substituted with the following meaning: 'means the individual who is Introduced by the Employment Business to render services via an Intermediary to the Client or the Client's client';
  - 11.1.3. the words 'Temporary Worker' in the first line of clause 2.7 are replaced with the word 'Intermediary';
  - 11.1.4. the last sentence of clause 8.5 shall not apply.

## 12. SUPERVISION, DIRECTION OR CONTROL

- 12.1. Solely in respect of an Assignment where the Employment Business, after conducting a review with the client concludes that the Temporary Worker(s) performing the services under that Assignment will not be subject to (or the right of) supervision, direction or control by the Client, the Employment Business or any third party, then the following provisions apply:
  - 12.1.1. the Client agrees that the Temporary Worker(s) shall determine how, when and where to perform the Assignment, and the number of hours required, subject to compliance with any reasonable operational requirements of the Client and opening hours and health and safety rules at the Client's site;
  - 12.1.2. clause 7.4 above shall not apply;
  - 12.1.3. the first sentence of clause 8.4 above shall not apply and shall be replaced with: "Temporary Workers are not subject to (or the right of) supervision, direction or control by the Client, the Employment Business or any third party for the duration of the Assignment";
  - 12.1.4. the first sentence of clause 9.2 above shall not apply; and
  - 12.1.5. the Client undertakes to ensure that the Temporary Worker(s) performing the services under the Assignment will not be subject to (or the right of) supervision, direction or control by the Client, the Employment Business or any third party, and the Client understands that the Employment Business is relying on this undertaking when agreeing to supply the Temporary Worker(s) for this Assignment.

## 13. OFF-PAYROLL

- 13.1. Where the Off-Payroll working tax rules apply in respect of the Client (or any end user of the Services and Services are in scope, the Client undertakes and agrees to assess the working practices of the Services to be provided during the Assignment and to issue the Employment Business with its SDS and the reasons for the decision in writing prior to the commencement of each Assignment and to comply with the statutory requirements to notify the Temporary Worker.
- 13.2. Where the Off-Payroll working tax rules apply to the Client (or any end user of the Services), the Client undertakes and agrees to provide any information reasonably requested at any time by the Employment Business promptly in order to assist the Employment Business to comply with Off-Payroll.
- 13.3. Client undertakes and agrees to notify the Employment Business in the event of changes to information provided under clauses 13.1 or 13.2 that occur during an Assignment and reissue an SDS if working practices and conditions change.
- 13.4. Client warrants and undertakes that all information it provides to the Employment Business under these terms is true and accurate.
- 13.5. Client warrants to comply with its statutory obligations to provide a status disagreement process and use best endeavours to resolve status determination agreements equitably and within forty-five (45) calendar days, beginning with the day the disagreement representation is received.
- 13.6. Client warrants to comply with its statutory obligation to, upon request by Employment Business, confirm its size under Off-Payroll and to notify of a change in its size (i.e. "small", "medium" or "large" for the relevant tax year for the purposes of Chapter 8 of Part 2 of ITEPA).
- 13.7. Client undertakes and agrees to notify the Employment Business where the Client (or any end user of the Services) is based wholly overseas as defined under Off-Payroll.

## APPENDIX

The AWR and related regulations impose obligations on both hirers and employment businesses to provide R.5 Rights and R.5 Terms and Day 1 Rights as well as other obligations. To enable both the Employment Business and the Client to comply, the Client agrees the following. The definitions set out in the Employment Business's terms of business shall apply in this Appendix, and references to paragraphs are to paragraphs in this Appendix.

### Reg. 5 rights

1. The AWR under Reg. 5 require the Employment Business to provide to each Temporary Worker after 12 weeks on assignment the Reg. 5 Terms. To enable the Employment Business to ensure that the Temporary Worker is provided with these rights, the Client shall provide:
  - (i) the Previous Work Information prior to the commencement of an Assignment and as soon as the Employment Business advises the Client of the identity of the Temporary Worker;
  - (ii) the Comparator Terms Information prior to the commencement of an Assignment if the Candidate already has Reg. 5 Rights, or in any other case promptly on receiving a request from the Employment Business to provide this information;
  - (iii) any additional information that the Employment Business may request following the provision of the Previous Work Information and/or Comparator Terms Information promptly after such request.
2. The Client shall at all times keep the Employment Business updated in relation to the information provided in accordance with paragraph 1 and if the Comparator Terms Information changes because there is a change to the terms that apply in the Client's organisation to new recruits doing the same job the Client shall inform the Employment Business immediately with details of the change.
3. The Client acknowledges that the Employment Business shall be entitled to increase its charge to the Client to reflect any increased value which should accrue to the Temporary Worker as a result of the change in comparator terms.
4. Liability under the AWR may attach to both the Client and the Employment Business in the event that Reg. 5 Rights are not correctly provided where applicable. Accordingly the Client recognises that the Employment Business may rely upon the information the Client provides and the Employment Business cannot accept liability as a result of the Employment Business relying on incorrect or inaccurate

information provided by the Client, and the Client shall indemnify the Employment Business against any loss, damage, expense and claims (including without limitation claims by Temporary Workers) incurred by the Employment Business arising in consequence of the Employment Business's reliance on such information.

#### Day 1 rights

5. Temporary Workers have entitlement to Day 1 Rights which the Client must provide. In respect of:
  - (i) shared facilities the Client agrees not to treat the Temporary Worker any less favourably than a comparable worker save on the grounds set out in Reg. 12 AWR; and
  - (ii) relevant vacant posts, the Client shall provide information to the Temporary Worker of any relevant vacant posts as set out in Reg. 13 AWR.
6. The Client agrees that it is solely responsible for providing the Day 1 Rights, and shall indemnify the Employment Business against any loss, damage, expense and claims (including without limitation claims by Temporary Workers) incurred by the Employment Business in respect of the Client's failure to provide the Day 1 Rights.

#### No Detriment

7. The Client shall not subject the Temporary Worker to any detriment on any of the grounds set out in Reg. 17 of the AWR

#### Mother's Rights

8. In respect of a Temporary Worker who is pregnant, has recently given birth or is breastfeeding, where, for health and safety reasons, there may be a risk to the Temporary Worker, the Client agrees, before ending an Assignment: (i) to take all practicable steps to make any reasonable adjustments or modifications to remove or reduce the risk to acceptable levels; and
  - (ii) consider whether there are any other suitable roles within its organisation for which the Temporary Worker can be supplied by the Employment Business and advise the Employment Business accordingly; and
  - (iii) not to discriminate against the Temporary Worker.

#### General

9. Wherever the Employment Business supplies a Temporary Worker to you who as an individual is either carrying on a profession or a business undertaking, the Client agrees the following.

#### The Client's Status

10. Without affecting the arrangements for supply and payment through the Employment Business, the Client's status in relation to that individual is as a client or customer of that profession or business undertaking so carried on, and the individual is not an Agency Worker by virtue of Reg. 3(2)(b) of the AWR. Accordingly in these circumstances the

Employment Business agrees to inform the Client of the profession or business undertaking so carried on, and where the Employment Business does so, subject to paragraph 11, paragraphs 1 to 8 inclusive shall not apply.

11. Where the Employment Business informs the Client that the individual is carrying on a profession or business undertaking, it will be the Employment Business's reasonable belief from information provided to the Employment Business by the individual Temporary Worker that this is the case. Accordingly if the Client becomes aware of any circumstances leading to the conclusion that the Temporary Worker is not in fact carrying on a profession or business undertaking, the Client shall inform the Employment Business immediately and provide the Employment Business with the information required under paragraphs 1 and 2.

#### Face Fit

12. Where the Employment Business is requested by the Client to carry out face fit testing for respiratory protective equipment ("RPE") for Temporary Workers at the Client site, the Employment Business confirms that this will be carried out by an appropriately trained, qualified and experienced member of its staff but the Client remains wholly responsible for ensuring the health and safety of Temporary Workers for the duration of their Assignment and as such the Client agrees that the face fit testing of RPE, both the initial testing and each time RPE is required to be worn, is carried out under its direct control and supervision. If a Temporary Worker is to wear more than one type of tight-fitting RPE, then the Client shall provide each type of RPE for initial fit testing. The Client will ensure that the make, model, type and size of RPE that each Temporary Worker wore when they had their initial successful fit test is made available for their use during the Assignment.
13. The Client further agrees that it will have a competent and appropriately trained, qualified and experienced representative on site to ensure that all Temporary Workers shall wear appropriate RPE at all appropriate times, including that the RPE correctly fits each Temporary Worker each time they are required to wear it, as well as during the time they are to wear it. The Client should take particular care where a Temporary Worker has any facial hair as it will not be possible to achieve a good seal.
14. Notwithstanding any other provision of this Agreement the Employment Business shall not have any liability to the Client under or in connection with the face fit testing service of RPE for Temporary Workers howsoever arising (including but not limited to negligence) and the Client shall indemnify the Employment Business and keep it indemnified in respect of any claims (including without limitation claims by Temporary Workers), damages, costs and expenses arising out of or in connection with the face fit testing service of RPE for Temporary Workers.

# TERMS OF BUSINESS FOR THE INTRODUCTION OF PERMANENT STAFF TO BE DIRECTLY EMPLOYED BY THE CLIENT

## 1 DEFINITIONS

1.1 In these terms of business (“Terms”) the following definitions apply:

“Applicant” means any person Introduced by the Agency to the Client for an Engagement including but not limited to any officer or employee of the Applicant if the Applicant is a limited company, and members of the Agency’s own staff;

“Client” means the person to whom the Applicant is Introduced, being a party to these Terms;

“Agency” means Daniel Owen Ltd company number 2142070, incorporated in England and Wales, registered office Hadwyn House, Field Road, Reading, Berkshire RG1 6AP ;

“Engage” means to engage, employ under a contract of employment or service contract, use or contract with for the supply of services, whether directly or through any intermediary person, whether on a permanent, temporary or ad hoc basis, or through an employment business (as defined in sections 13(1) and (3) of the Employment Agencies Act 1973 as amended from time to time), or under an agency, licence, franchise or partnership agreement; or any other engagement and “Engagement” shall have a corresponding meaning;

“Fee” means an amount equal to a percentage of the Remuneration, as follows:

For commercial staff (being commercial directors and managers, surveyors, building surveyors, estimators, buyers and planners of all grades and levels):

Remuneration	Fee (as a percentage of the total Remuneration)
Up to £19,999	17.5%
£20,000 to £37,499	20%
£37,500 to £49,999	25%
£50,000 and above	30%

For all staff other than commercial staff (including without limitation construction/contracts/projects directors and managers, site managers, engineers, agents and foremen of all grades and levels):

Remuneration	Fee (as a percentage of the total Remuneration)
Up to £19,999	15%
£20,000 to £37,499	17.5%
£37,500 to £49,999	20%
£50,000 and above	25%

“Introduce” means the supply to the Client by the Agency of the name and curriculum vitæ of, or other information which identifies, a person who is seeking an Engagement, whether or not that person was previously known to the Client, and “Introduction” shall have a corresponding meaning;

“Remuneration” means, in the case of an Applicant Engaged by the Client (or Third Party as the case may be) under a contract of employment or service agreement, the base salary plus any other gross income and benefits guaranteed to the Applicant, including without limitation guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, and all other payments and taxable (and, where applicable, non-taxable) benefits or emoluments payable to or receivable by the Applicant in relation to such Engagement (and where the Applicant is provided with a company car a notional 15% of the base salary will be added) the for the first year of the Engagement, or for the term of the Engagement if less than one year; or

means in the case of an Applicant Engaged by the Client (or a Third Party as the case may be) other than under a contract of employment or service agreement, the total guaranteed and/or reasonably anticipated payments, excluding reimbursement of out-of-pocket expenses and VAT, receivable by the Applicant in respect of such Engagement for the first year of the Engagement, or for the term of the Engagement if less than one year;

“Third Party” means a person to whom the Client gives details of or refers an Applicant.

1.2 Unless the context requires otherwise, 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.

1.4 A reference to a ‘person’ includes any individual, firm, company, corporation, body corporate, government, state or agency of state, joint venture, association (whether or not having separate legal personality and irrespective of the laws of the jurisdiction in or under which it was incorporated or exists).

## 2 THE CONTRACT

2.1 These Terms govern the Introduction of all Applicants to the Client and is deemed to be accepted by the Client by virtue of an Introduction of an Applicant.

2.2 These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by a director of the Agency, these Terms prevail over any other terms of business or purchase conditions put forward by the Client.

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

2.4 The Client shall be deemed to have notice of an Applicant and thereby to be Introduced, within 48 hours of the despatch by the Agency of details of the Applicant, or in the case of despatch by facsimile, telephone or electronic means when the Introduction shall be deemed to have occurred at the time of despatch.

2.5 Under these Terms the Agency will operate as an employment agency as defined in sections 13(1) and (2) of the Employment Agencies Act 1973. The Agency does not have authority to act for the Client, nor is it authorised to enter into contracts with Applicants on behalf of the Client.

## 3 NOTIFICATION AND FEES

3.1 The Client agrees to notify the Agency immediately:

3.1.1 of any offer of an Engagement which it makes to the Applicant;

3.1.2 that its offer of an Engagement to the Applicant has been accepted and to provide full details of the Remuneration to the Agency prior to the commencement of that Engagement; and

3.1.3 it becomes aware of any Third Party Engaging an Applicant and to provide any details of Remuneration it is aware of.

3.2 The Agency is entitled to invoice the Client for the Fee upon the Client or a Third Party Engaging an Applicant within 6 months of the most recent Introduction of that Applicant. If after receiving an acceptance from an Applicant of an offer of an Engagement, but before the commencement of that Engagement, the Client fails to provide the Agency with full details of the Remuneration in respect of that Engagement, notwithstanding any other term of these Terms, the Fee payable will be an amount equal to 35% of the Remuneration.

3.3 The Client shall not take any steps to prejudice or avoid payment of a Fee properly due to the Agency.

3.4 In respect of Engagements for a fixed term of less than 12 months, the Fee will be calculated on the Remuneration for the term of the Engagement, but in all cases there is a minimum fee of £2,000. If the Engagement is extended beyond the initial fixed term the Client shall be liable to pay a further Fee based in the additional Remuneration applicable for the period of such extension or extensions up to the termination of such extension(s) or the first anniversary of the commencement of the initial fixed term, whichever is the sooner. If the Client re-engages the Applicant within 6 calendar months from the date of termination of the first Engagement (or previous Engagement) of the Applicant the Client shall be liable to pay a further Fee based on the additional Remuneration applicable for the period of such subsequent Engagement(s) subject to a maximum aggregate of one year for all such Engagements.

- 3.5 If, after an offer of Engagement has been made to the Applicant, the Client decides for any reason to withdraw it, the Client shall be liable to pay the Agency an administration fee of £1,000. If the Client subsequently engages the Applicant within 6 months of the most recent Introduction, the Agency is entitled to invoice for the Fee (less the administration fee already paid) as usual.
- 3.6 Where there is a dispute as to the level of Remuneration, the parties shall use their best endeavours to reach agreement as soon as possible. Where the amount of the actual Remuneration is not known the Agency is entitled to charge the Fee calculated on the minimum level of remuneration applicable for the position in which the Applicant has been Engaged with regard to any information supplied to the Agency by the Client and/or comparable positions in the market generally for such positions.
- 3.7 If any employee of the Agency with whom the Client has had personal dealings accepts an Engagement with the Client within 3 months of leaving the Agency's employment, the Agency shall be entitled to charge the Fee.

#### 4 PAYMENT

- 4.1 The Client will pay all invoices within 21 days from the date of the invoice.
- 4.2 VAT will be charged on all invoices amounts if applicable.
- 4.3 The Client agrees to pay all sums due in accordance with these Terms and no deduction shall be made by the Client in respect of any set-off or counter claim howsoever arising.
- 4.4 In the event of late payment, the Agency may charge a compensatory fixed sum and statutory interest in accordance with The Late Payment of Commercial Debts (Interest) Act 1998 (as amended). In addition, the Client shall pay any court fees, expenses, credit insurers' charges and legal costs incurred by the Agency in recovering any sums owing to it under these Terms.

#### 5 REFUNDS

- 5.1 Subject to clause 5.2, the Agency shall rebate the Client the percentage as set out in the table below in respect of any particular Applicant (less an administrative charge of £400) if such Applicant ceases to be Engaged (and in the case of a fixed term contract before the expiry of the fixed term) for whatever reason within twelve weeks of the start of the Engagement.
- 5.2 A rebate will not be payable:
- 5.2.1 if the invoice against which the rebate is payable is not paid by the due date;
- 5.2.2 if the Applicant has been made redundant as defined in section 139 of the Employment Rights Act 1996;
- 5.2.3 if notification of the Remuneration relevant to an Engagement is not provided by the Client to the Agency prior to the commencement of the Engagement in accordance with clause 3.1.2 above;
- 5.2.4 if notification in writing is not received within 48 hours of termination, giving reason for termination and date of termination;
- 5.2.5 in respect of Engagements by Third Parties;
- 5.2.6 in respect of any Fee charged in accordance with clauses 3.4 or 3.5 above; or
- 5.2.7 in respect of Applicants previously supplied to the Client on a temporary or fixed term basis.
- 5.3 If the Client Engages an Applicant in respect of whom a rebate has been paid within 6 months of the termination of the previous Engagement, the Client shall repay the rebate to the Agency immediately, collectible by the Agency as a debt, and no further rebate shall be payable in respect of that Applicant.

Week of the Engagement in which Applicant leaves	% of Fee refunded
1-2	90%
3-4	80%
5-6	60%
7-8	40%
9-10	20%
11-12	10%

- 5.4 There will be no refund where the Applicant leaves during or after the 13<sup>th</sup> week of the Engagement.

#### 6 SUITABILITY AND REFERENCES

- 6.1 The Agency endeavours to ensure the suitability of any Applicant Introduced to the Client. Notwithstanding this the Client shall satisfy itself as to the suitability of the Applicant and shall take up any references

provided by the Applicant and/or the Agency before engaging such Applicant. The Client shall be responsible for obtaining work and other permits if required, for the arrangement of medical examinations and/or investigations into the medical history of any Applicant, and satisfying any medical and other requirements or qualifications required by law of the country in which the Applicant is Engaged to work.

- 6.2 To enable the Agency to comply with its obligations, the Client undertakes to provide to the Agency details of the position which the Client seeks to fill, including the type of work that the Applicant would be required to do; the location and hours of work; the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Applicant to possess in order to work in the position; and any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks. In addition the Client shall provide details of the date the Client requires the Applicant to commence, the duration or likely duration of the work; the minimum rate of remuneration, expenses and any other benefits that would be offered; the intervals of payment of remuneration and the length of notice that the Applicant would be entitled to give and receive to terminate the employment with the Client.

#### 7 SPECIAL SITUATIONS

- 7.1 Where the Applicant is required by law, or any professional body to have any qualifications or authorisations to work in the position which the Client seeks to fill; or the work involves caring for or attending one or more persons under the age of eighteen, or any person who by reason of age, infirmity or who is otherwise in need of care or attention, the Agency will take all reasonably practicable steps to obtain and offer to provide copies of any relevant qualifications or authorisations of the Applicant, two references from persons not related to the Applicant who have agreed that the references they provide may be disclosed to the Client and has taken all reasonably practicable steps to confirm that the Applicant is suitable for the position. If the Agency is unable to do any of the above it shall inform the Client of the steps it has taken to obtain this information in any event.

#### 8 LIABILITY

- 8.1 The Agency shall not be liable under any circumstances for any loss (including but not limited to loss of profit), injury, expense, damage, delay, costs or compensation (whether direct, indirect or consequential) which may be suffered or incurred by the Client arising from or in any way connected with the Agency seeking an Applicant for the Client or from the Introduction to or Engagement of any Applicant by the Client or from the failure of the Agency to introduce any Applicant or from any act or omission on the part of the Applicant Introduced. For the avoidance of doubt, nothing contained in these Terms shall exclude any liability for death or personal injury arising from the Agency's own negligence.
- 8.2 The Client shall indemnify and keep indemnified the Agency against any costs, claims or liabilities incurred by the Agency arising out of an Engagement for the Client and/or as a result of any breach of these Terms by the Client.

#### 9 LAW

- 9.1 These Terms are governed by the law of England & Wales and the parties are subject to the exclusive jurisdiction of the courts of England & Wales.