

# Contract for Services for the Engagement of an Agency Worker

## BETWEEN

- (1) Earl Street Recruitment (and its successors), a company incorporated in England and Wales under company number 02227423 and having its registered office at Laurel House, 43 Earl Street, Maidstone, ME14 1PD trading as Earl Street Employment Consultants Ltd (“the Company”); and
- (2) **[Name of Agency Worker]**, whose address is **[insert Agency Worker’s address and postcode]** (“the Agency Worker”).

## IT IS AGREED as follows

### 1. Interpretation and Definitions

- 1.1. Unless the context otherwise requires, references to the singular include the plural, and references to the masculine include the feminine and vice versa.
- 1.2. The headings contained in the Agreement are for convenience only and do not affect their interpretation.
- 1.3. In these Terms of Engagement, the following definitions apply:
  - 1.3.1. **“Agreed Deductions”** means any deductions the Agency Worker has agreed can be made from his/her pay;
  - 1.3.2. **“Assignment”** means the period during which the Agency Worker is supplied by the Company to provide services to the Hirer. Each Assignment period will end when the Agency Worker ceases to be supplied to a Hirer or be available for work except where this relates to normal shift breaks or approved absences.
  - 1.3.3. **“Assignment Schedule”** means the schedule or written details agreed between the Company and the Agency Worker for each Assignment containing all relevant particulars of the Assignment;
  - 1.3.4. **“AWR”** means the Agency Workers Regulations 2010 (as amended from time to time),
  - 1.3.5. **“Hirer”** means the person, firm or corporate body together with any subsidiary or associated company as defined by section 1159 of the Companies Act 2006 to whom the Agency Worker is supplied or introduced and includes any third party for whom the Agency Worker works pursuant to these Terms of Engagement on behalf of the Hirer.
  - 1.3.6. **“Qualifying Period”** means the period as defined in Regulation 7 of the AWR for the Agency Worker to become entitled to the same basic working conditions as defined in Regulation 5 of the AWR.
  - 1.3.7. **“Relevant Period”** means the later of (a) a period of 8 weeks after the last day on which the Agency Worker worked for the Hirer having been supplied by the Company; or (b) a period of 14 weeks from the first day on which the Agency Worker worked for the Hirer having been supplied by the Company 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;
  - 1.3.8. **“Terms”** means the terms and conditions set out herein together with any Assignment Schedule to these terms;
  - 1.3.9. **“Type of Work”** means Industrial Sector and/or GLAA Industry
  - 1.3.10. **“WTR”** – means the Working Time Regulations 1998 (as amended from time to time),

### 2. The Contract

- 2.1. These Terms are entered into on the date recorded at the end of this document and will apply until terminated in accordance with them. There is no previous service..
- 2.2. There is no probationary period associated with these Terms.
- 2.3. These Terms constitute the entire agreement between the Company and the Agency Worker and supersede all previous agreements between the parties in relation to the subject matter hereof and shall govern all Assignments undertaken by the Agency Worker. These Terms shall prevail over any other terms put forward by the Agency Worker.
- 2.4. No contract shall exist between the Company and the Agency Worker between Assignments.
- 2.5. There are no collective agreements which affect these Terms.
- 2.6. No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Company and the Agency Worker and set out in writing and signed by both parties. A copy of the varied Terms shall be given to the Agency Worker stating the date on or after which such varied terms shall apply.
- 2.7. If there is a conflict between these Terms and an Assignment Schedule, save for where expressly stated otherwise, the Assignment Schedule shall take precedence.

### 3. Agency Worker’s Status

- 3.1. During an Assignment, the Agency Worker will be engaged by the Company under a contract for services.

- 3.2. The parties acknowledge that the Agency Worker is not an employee of the Company, and these Terms shall not give rise to a contract of employment between the Company or the Hirer and the Agency Worker.
- 3.3. The Agency Worker is supplied as a worker and is entitled to certain statutory rights. Nothing in these Terms shall be construed as giving the Agency Worker rights in addition to those provided by statute except where expressly stated.

#### **4. Assignments**

- 4.1. The Company will endeavour to obtain suitable Assignments for the Agency Worker to perform the agreed type of work shown in the Assignment Schedule.
- 4.2. The parties agree that the Agency Worker shall not be obliged to accept any Assignment offered by the Company, and the Company shall incur no liability to the Agency Worker should it fail to offer Assignments to the Agency Worker.
- 4.3. The Agency Worker acknowledges that, due to the nature of temporary work, there may be periods when no suitable work is available and the Agency Worker agrees that the suitability of work shall be determined solely by the Company.
- 4.4. Normal working hours and days are variable and are specified in the Assignment Schedule.
- 4.5. For the purpose of calculating the average number of weekly hours worked by the Agency Worker on an Assignment for the purposes of the WTR, the start date for the relevant averaging period shall be the date on which the Agency Worker commences the first Assignment.
- 4.6. The Agency Worker acknowledges that, should the Hirer or any third party introduced to the Agency Worker by the Hirer wish to engage the Agency Worker either directly or through another employment business or third party, before or during an Assignment or during the Relevant Period, the Company will be entitled to either charge the Hirer a transfer fee or to agree an extended hire period with the Hirer at the end of which the Agency Worker may be engaged directly by the Hirer or the third party or through another employment business. The Agency Worker undertakes to inform the Company immediately of any such offer of engagement.

#### **5. Company's Obligations**

- 5.1. When an Assignment is offered to the Agency Worker the Company shall provide the Agency Worker with a written Assignment Schedule.
- 5.2. If a variation to the Assignment Schedule is agreed between the Agency Worker and the Company, the Company shall provide a copy of the Assignment Schedule confirming the agreed variation to the Agency Worker by no later than 5 business days following the day on which the variation was agreed.
- 5.3. An Assignment Schedule may not be provided by the Company to the Agency Worker in the following circumstances:
  - 5.3.1. where the Agency Worker is being offered an Assignment in the same position as he/she has undertaken within the previous five working days and the Assignment Schedule has already been provided to the Agency Worker; or
  - 5.3.2. where the Assignment is intended to last for 5 consecutive working days or less and the Assignment Schedule has been previously provided to the Agency Worker before and the details remain unchanged. In such situations the Company may only provide written confirmation of the identity of the Hirer and the likely duration of the Assignment. Where the Assignment subsequently extends beyond 5 working days, the Company shall provide an Assignment Schedule to the Agency Worker within 8 days of the start date of the Assignment.
- 5.4. Training the Agency Worker is required to complete will be stated in the relevant Assignment Schedule.
- 5.5. The Company will comply with its automatic enrolment duties under the Pensions Act 2008.

#### **6. Agency Worker's Obligations**

- 6.1. The Agency Worker shall during every Assignment and afterwards where appropriate:
  - 6.1.1. co-operate with the Hirer's reasonable instructions and accept the direction and supervision of any responsible person in the Hirer's organisation;
  - 6.1.2. make themselves available to the Hirer for not less than the minimum daily working hours (the Assignment Work Pattern), shown on the Assignment Schedule.
  - 6.1.3. observe all relevant rules, policies and regulations of the Hirer site of which he/she is made aware, or which he/she might reasonably be expected to ascertain;
  - 6.1.4. take all reasonable steps to safeguard his/her own safety and that of any other person who may be affected by his/her actions during the Assignment;
  - 6.1.5. not engage in any conduct detrimental to the reasonable interests of the Company or the Hirer including without limitation any conduct reasonably likely to bring the Company or the Hirer into disrepute, or which results in the loss of custom or business;

- 6.1.6. conduct him/herself in a professional manner, to dress appropriately, to wear any form of identification required by the Hirer and to observe all applicable laws;
- 6.1.7. at the end of the Assignment or on demand, return to the Company or the Hirer as directed, all property of the Company or Hirer including but not limited to all equipment, materials, documents (including copies) and other such materials, security passes, keys, uniforms, personal protective equipment or clothing.
- 6.2. If the Agency Worker is unable for any reason to attend work during the course of an Assignment he/she should inform the Company, prior to the working day or hours. The Hirer should be contacted where contact with the Company is not possible, but the Agency Worker must also inform the Company at the first possible opportunity.
- 6.3. Where the Agency Worker becomes aware of any reason why he/she may not be suitable for an Assignment either before the commencement of or during the Assignment, he/she shall notify the Company immediately.
- 6.4. By commencing an Assignment, the Agency Worker acknowledges that he/she is not aware of anything, which will cause a detriment to his/her interests and/or the interests of the Company and/or the interests of the Hirer by being engaged in such an Assignment. The Agency Worker shall inform the Company immediately if he/she becomes aware of any circumstances which would render such engagement so detrimental. The Agency Worker will notify the Company immediately of any circumstances that might reasonably affect the willingness of a Hirer to accept his/her services.
- 6.5. The Agency Worker warrants that all information given to the Company as to his/her identity, permission to work in the UK, experience, training, qualifications and authorisations which the Hirer considers are necessary, or which are required by law or by any professional body to work in the position which the Hirer seeks to fill is true and complete.
- 6.6. *Standards of behaviour required of the Agency Worker, Company procedures for managing contract termination related to the conduct and capability of the Agency Worker, and rights to appeal such decisions are detailed separately within Company procedures and will be provided on request. These do not form part of the Agency Worker's terms and conditions and may be changed at the Company's discretion.'*
- 6.7. Prior to commencement of any Assignment, the Agency Worker shall inform the Company if s/he is aware that s/he has worked for the Hirer (or for any company which is a parent company of, subsidiary company of, or shares an ultimate parent company with the Hirer) including via another employment business or third party at any time in the 18 calendar months up to commencement of the most recent Assignment and if so, details of when and in what role(s), including details of any breaks between periods of work, and the reasons for such breaks.
- 6.8. Where an Agency Worker believes that s/he is entitled to access to collective facilities and amenities or to be informed of any relevant vacant posts with the hirer or, having completed the Qualifying Period for an Assignment, s/he is entitled to but has not received the same basic working conditions (as defined in the AWR) as if s/he were directly recruited by the Hirer, the Agency Worker should discuss this with the Company or otherwise raise this in writing with the Company setting out the premise for the concern.
- 6.9. The Agency Worker acknowledges that any breach of his/her obligations under this clause may cause the Company to suffer loss and he/she agrees that the Company reserves the right to make a claim for damages to recover such losses from the Agency Worker.

## **7. Timesheets**

- 7.1. At the end of each week of an Assignment, unless instructed otherwise, the Agency Worker shall deliver to the Company a fully and accurately completed timesheet indicating the number of hours worked during the preceding week (or such lesser period) and signed by an authorised representative of the Hirer.
- 7.2. Subject to clause 7.3 the Company shall pay the Agency Worker for all hours worked regardless of whether the Company has received payment from the Hirer for those hours.
- 7.3. Should the Agency Worker fail to submit a properly completed or authorised timesheet, the Company shall conduct an investigation regarding the hours claimed by the Agency Worker and the reasons for the Hirer's refusal to sign a timesheet in respect of those hours. The Company shall endeavour to complete the investigation in a timely manner however this may delay any payment due to the Agency Worker.

For the purposes of the WTR, the Agency Worker's working time shall only consist of those periods during which he/she undertakes work for the Hirer as part of the Assignment. Subject to any amendments made to the Agency Worker's basic working conditions during the term of this Agreement, and set out in the relevant Assignment Schedule in compliance with Regulation 5 of the AWR, time spent travelling to the Hirer's premises, lunch breaks and other rest breaks shall not count as part of the Agency Worker's working time for these purposes, unless otherwise detailed in the assignment schedule.

## **8. Payment**

- 8.1. The Company shall pay to the Agency Worker the rate of pay set out in the relevant Assignment Schedule which will be paid for time worked during an Assignment weekly in arrears. The hourly rate may vary but will be at least equivalent to the appropriate statutory minimum wage in force at the time for the work undertaken.
- 8.2. The parties acknowledge that the Company is required to make certain deductions from the Agency Worker's pay. Pay will be 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, any other deductions which the Company may be required by law to make and, any Agreed Deductions, and that the Company is entitled to make deductions from the Agency Worker's pay for any overpayment of wages, holiday pay, non-returned Company or Hirer's property and for any monies owed to the Company by the Agency Worker.
- 8.3. The Agency Worker may, by virtue of having completed the Qualifying Period for an Assignment, be entitled under the AWR to an increase in his/her pay and other emoluments and any such variation will be notified to the Agency Worker in the Assignment Schedule.
- 8.4. The Agency Worker agrees to comply with any requirements of the Company and/or the Hirer relating to the assessment of the Agency Worker's performance for the purpose of determining entitlement to any element of pay including bonuses. Subject to any statutory entitlement under the relevant legislation, the Agency Worker is not entitled to receive any payment from the Company or Hirer for time not spent on Assignment, whether in respect of holidays, illness or absence for any other reason unless otherwise agreed.

## **9. Statutory Paid Annual Leave**

- 9.1. Subject to any increased entitlement pursuant to the AWR, the Agency Worker is entitled to paid annual leave for time worked during an Assignment according to the statutory minimum as amended from time to time.
- 9.2. Subject to any increased entitlement pursuant to the AWR, the current statutory entitlement to paid annual leave is 5.6 weeks or, where relevant, as per the appropriate statutory minimum which applies to the role that the Agency Worker is undertaking.
- 9.3. In the event that the Agency Worker is entitled to an increase in paid and/or unpaid annual leave, by virtue of having completed the Qualifying Period any such increase in entitlement will be notified to the Agency Worker in the Assignment Schedule.
- 9.4. The Leave Year is the annual period during which the Agency Worker accrues and may take statutory leave and commences on 1<sup>st</sup> October and runs until the anniversary of that date;
- 9.5. Unless otherwise stated in the relevant Assignment Schedule, paid annual leave entitlement accrues as follows: where the Agency Worker has normal working hours, in proportion to the number of normal working hours the Agency Worker works on assignments during the leave year as specified in the relevant Assignment Schedule; where the Agency Worker has no normal working hours, on all hours worked; and in either case, as may otherwise be required by legislation.
- 9.6. Save where this clause is amended by the relevant Assignment Schedule, 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.
- 9.7. Unless otherwise stated in the relevant Assignment Schedule, where an Agency Worker wishes to take paid leave during the course of an Assignment he/she should notify the Company of the dates of his/her intended absence giving notice of at least twice the length of the period of leave that he/she wishes to take. Where the Agency Worker has given notice of a request to take paid annual leave in accordance with this clause, the Company may give counter-notice to the Agency Worker to postpone or reduce the amount of leave that the Agency Worker wishes to take. In such circumstances, the Company 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.
- 9.8. The Company may require the Agency Worker to take paid annual leave at specific times or notify the Agency Worker of periods when paid annual leave cannot be taken.
- 9.9. Unless otherwise stated in the relevant Assignment Schedule, where a Bank or 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, the Agency Worker may upon giving notice be paid for that day as part of his/her annual leave entitlement.
- 9.10. Payment for annual leave is calculated in accordance with statutory requirements by reference to the Agency Worker's average remuneration for all hours worked on which holiday has been accrued in the preceding 52 weeks worked on assignment(s).
- 9.11. Subject to any increased entitlement pursuant to the AWR or otherwise stated in the relevant Assignment Schedule, all entitlement to leave must be taken during the course of the Leave Year in which it accrues for WTD leave. The Agency Worker is responsible for ensuring that all paid annual leave is requested and taken within this period.
- 9.12. Where this contract is terminated by either party, 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 at the date of termination.

**10. Statutory Sick Pay**

- 10.1. The Agency Worker may be eligible for Statutory Sick Pay provided that he/she meets the relevant statutory criteria.
- 10.2. The Agency Worker is required to provide the Company with evidence of incapacity to work which may be by way of a self-certificate for the first 7 days of incapacity and a Statement of Fitness to Work (fit note), issued by an appropriately qualified healthcare professional, thereafter.
- 10.3. Statutory Sick Pay is not payable for the first three qualifying days in a period of incapacity for work. Qualifying days for entitlement to payment are the days on which the Agency Worker is due to work on an Assignment.
- 10.4. In the event that the Agency Worker submits a fit note, which indicates that the Agency Worker may, subject to certain conditions, be fit to work/return to work, the Company will, in its absolute discretion, determine whether the Agency Worker will be (a) placed in a new Assignment or (b) permitted to continue in an ongoing Assignment. In making such determination the Company may consult with the Hirer and the Agency Worker as appropriate to assess whether the conditions identified in the Statement or similar documentation can be satisfied for the duration of the Assignment. In such a case the Agency Worker's placement in a new Assignment or continuation in an ongoing Assignment may be subject to the Agency Worker agreeing to a variation of the Terms or the assignment details set out in the Assignment Schedule to accommodate any conditions identified.
- 10.5. If the Incapacity is or appears to be occasioned by actionable negligence, nuisance or breach of any statutory duty on the part of a third party in respect of which damages are or may be recoverable, you shall immediately notify the Company of that fact and of any claim, settlement or judgment made or awarded in connection with it and all relevant particulars that the Company may reasonably require. You shall if required by us, cooperate in any related legal proceedings and refund to us that part of any damages or compensation recovered by you relating to the loss of earnings for the period of the Incapacity as the Company may reasonably determine, less any costs borne by you in connection with the recovery of such damages or compensation, provided that the amount to be refunded shall not exceed the total amount paid to you by us in respect of the period of Incapacity."

**11. Termination**

- 11.1. Either party may terminate an Assignment or these Terms at any time without prior notice or liability.
- 11.2. The Agency Worker acknowledges that the continuation of an Assignment is subject to and conditioned by the continuation of the contract between the Company and the Hirer. In the event that the contract between the Company and the Hirer is terminated for any reason the Assignment shall cease with immediate effect without liability of the Company (save for payment for hours worked by the Agency Worker up to the date of termination of the Assignment).
- 11.3. If the Agency Worker does not inform the Company or the Hirer that he/she is unable to attend work during the course of an Assignment pursuant to clause 6.2 this will be treated as termination of the Assignment by the Agency Worker in accordance with Clause 11.1, unless the Agency Worker can show that exceptional circumstances prevented them from complying with his/her obligations under Clause 6.2.
- 11.4. If the Agency Worker is absent during the course of an Assignment and the Assignment has not been otherwise terminated under Clauses 11.1 or 11.3, the Company will be entitled to terminate the Assignment in accordance with Clause 11.1 if the work to which the Agency Worker was assigned is no longer available.
- 11.5. If the Agency Worker does not report to the Company to notify his/her availability for work for a period of 3 weeks, the Company will terminate this Agreement and forward his/her P45 to the last known address.

**12. Intellectual Property Rights**

- 12.1. The Agency Worker acknowledges that all copyright, title and interest of whatever nature (including but not limited to copyright and patent application rights) and all other intellectual property rights deriving from work carried by them for the Hirer in connection with an Assignment shall vest in and remain the property of the Hirer throughout the world free from any interest of the Agency Worker, and the Agency Worker will do anything that the Hirer may reasonably require in order effectively to vest such rights in the Hirer or such third party as the Hirer specifies or to evidence the same (whether before or after the termination of these Terms).

**13. Confidentiality**

- 13.1. The Agency Worker may, become privy to the confidential information of the Company or any Hirer at which the Agency Worker works on Assignment.
- 13.2. Confidential Information shall mean any confidential information belonging to or about the Hirer or the Company, which if used by the Agency Worker other than in the course of the Assignment for the benefit of the Hirer or if disclosed to any third party either during or at any time after the termination of the Assignment would be of value or could cause damage to the Hirer or the Company whether directly or indirectly. Confidential information is confidential if it is labelled confidential, if the Hirer expressly states (whether in writing or otherwise) to the Agency Worker that the information is confidential or if the Agency Worker ought to have known that the information may be confidential.

13.3. Unless required to do so in the proper performance of his/her duties, the Agency Worker must not divulge or communicate to any person; use for any purposes other than those of the Company or, as appropriate, any Hirer; or cause any unauthorised disclosure, through any failure to exercise due care and attention, of any confidential information relating to the Company or any Hirer.

13.4. The Agency Worker agrees to deliver up to the Hirer or the Company (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 them during the course of an Assignment; and

The restrictions under this Confidentiality Clause shall continue to apply after the termination of this Agreement without limit in point of time but shall cease to apply to information or knowledge which is ordered to be disclosed by a Court of competent jurisdiction or otherwise required to be disclosed by law or which comes into the public domain other than as a result of a breach by the Agency Worker of his/her obligations under this Agreement.

**14. Data Protection**

14.1. Where the Company processes personal and special category data relating to the Agency Worker, it will do so in accordance with the General Data Protection Regulation and the legal bases for processing data in accordance with the Company's privacy notice which will be made available to the Agency Worker.

**15. General**

15.1. If any provision, clause or part-clause of these Terms is held to be invalid, void, illegal, or otherwise unenforceable by any judicial body, the remaining provisions of this Agreement shall remain in full force and effect to the extent permitted by law. Any delay by the Company in responding to any breach by the Agency Worker of this Agreement shall not be deemed nor operate as a waiver of that breach. If the Company expressly waives a breach of this Agreement by the Agency Worker, this will not constitute a waiver of any future breach.

15.2. The Company shall act as a Gangmaster (as defined in Section 4 of the Gangmasters (Licensing) Act 2004) when introducing the Agency Worker into Assignments with its Clients to which this Act applies and as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973) when introducing or supplying the Agency Worker into all other Assignments with its Hirers.

15.3. All notices which are required to be given in accordance with this Agreement shall be in writing and may be delivered personally or by first class prepaid post to the registered office of the party upon whom the notice is to be served or any other address that the party has notified the other party in writing or 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 that email is sent.

The Company and Agency Worker acknowledge that nothing in this statement confers on any third party any benefit or the right to enforce any terms of this statement.

15.4. These Terms are governed by the law of *England/ Wales* and are subject to the exclusive jurisdiction of the Courts of *England/Wales* in respect of any dispute arising from these Terms or its subject matter.

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Signed by and on behalf of the Parties as follows:

Signature: .....

Signature: .....

Name: .....

Name: .....

For and on behalf of the Agency Worker

For and on behalf of the Company

Date: .....

Date: .....