

## CONTRACT 3: TERMS OF BUSINESS WITH CLIENT FOR THE SUPPLY OF TEMPORARY CONTRACTORS

### 1. DEFINITIONS

1.1. In these terms (“**Terms**”) the following definitions apply:

- “Assignment”** means the period during which the Temporary Contractor is supplied by the Employment Business to provide services to the Client;
- “Assignment Details Form”** means written confirmation of the assignment details agreed with the Client prior to commencement of the Assignment;
- “Client”** means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Temporary Contractor is introduced;
- “Conduct Regulations”** means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended)
- “Employment Business”** ARC Norwich Limited (registered company no.6681810) of 3 & 4 Taverners Square, Silver Road, Norwich, NR3 4SY (“**the Employment Business**”).
- “Engagement”** means the engagement, employment or use of the Temporary Contractor by the Client or by any third party to whom the Temporary Contractor has been introduced by the Client on a permanent or temporary basis, whether under a contract of service or for services; an agency, license, franchise or partnership arrangement; or any other engagement; or through any other employment business; or through a corporate body of which the Temporary Contractor is an officer, employee or other representative; and “Engage”, “Engages” and “Engaged” shall be construed accordingly;
- “Introduction”** means (i) the passing to the Client of a curriculum vitae or information which identifies the Temporary Contractor; or (ii) the Client’s interview of a Temporary Contractor (in person or by telephone or by any other means), following the Client’s instruction to the Employment Business to supply a Temporary Contractor; or (iii) the supply of a Temporary Contractor; and, in any case, which leads to an Engagement of the Temporary Contractor; and “Introduces” and “Introduced” shall be construed accordingly;
- “Period of Extended Hire”** means any additional period that the Client wishes the Temporary Contractor to be supplied for beyond the duration of the original Assignment or series of Assignments as an alternative to paying a Transfer Fee;

- “Relevant Period”** means (a) the period of 8 weeks commencing on the day after the last day on which the Temporary Contractor worked for the Client having been supplied by the Employment Business; or (b) the period of 14 weeks commencing on the first day on which the Temporary Contractor worked for the Client having been supplied by the Employment Business or 14 weeks from the first day of the most recent Assignment where there has been a break of more than 6 weeks (42 days) since any previous assignment;
- “Remuneration”** includes gross base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Temporary Contractor for services provided to or on behalf of the Client or any third party.
- “Temporary Contractor”** means the limited company contractor who is introduced by the Employment Business to provide services to the Client;
- “Transfer Fee”** means the fee payable in accordance with clause 8 and Regulation 10 of the Conduct Regulations;
- “Vulnerable Person”** means any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention, and includes any person under the age of eighteen.

- 1.2. Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.
- 1.3. The headings contained in these Terms are for convenience only and do not affect their interpretation.

## 2. THE CONTRACT

- 2.1. These Terms together with the attached Schedule and any applicable Assignment Details Form (“**Terms**”) constitute the contract between the Employment Business and the Client for the supply of the Temporary Contractor’s services by the Employment Business to the Client and are deemed to be accepted by the Client by virtue of its request for, interview with or Engagement of the Temporary Contractor, or the passing of any information by the Client about a Temporary Contractor to any third party following an Introduction.
- 2.2. These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by a Director of the Employment Business, these Terms prevail over any terms of business or purchase conditions (or similar) put forward by the Client.
- 2.3. Subject to Clause 6.2 no variation or alteration to these Terms shall be valid unless the details of such variation are agreed between a Director of the Employment Business and the 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 Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973) when Introducing Temporary Contractors for Assignments with the Client .

2.5 During an Assignment the Temporary Contractor will be engaged on a contract for services by the Employment Business Neither the Employment Business or the Client will, or seek any right to, supervise, direct or control the manner in which the Temporary Contractor, or any individual utilised by the Temporary Contractor, provides the services.

2.6 As an independent business a Temporary Contractor may utilise such persons as is necessary in the performance of the Services and make substitutions thereof, provided always that any such persons are suitably qualified, skilled and experienced to provide the services.

### **3. CLIENT OBLIGATIONS**

3.1. To enable the Employment Business to comply with its obligations under the Conduct Regulations the Client undertakes to provide to the Employment Business details of the position which the Client seeks to fill, including the following:

3.1.1. the type of work that the Temporary Contractor would be required to do;

3.1.2. the location and hours of work;

3.1.3. the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Temporary Contractor to possess in order to work in the position;

3.1.4. any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;

3.1.5. the date the Client requires the Temporary Contractor to commence the Assignment;

3.1.6. the duration or likely duration of the Assignment;

3.1.7. the minimum rate of pay, expenses and any other benefits that would be offered.

3.2. The Client will assist the Employment Business in complying with the Employment Business' duties under the Working Time Regulations 1998 (as amended) 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. If the Client requires the services of a Temporary Contractor for more than 48 hours in any week during the course of an Assignment, the Client must notify the Employment Business of this requirement before the commencement of the Assignment or at the very latest, where this is not reasonably practicable, before the commencement of the week in which the Client requires the Temporary Contractor to work in excess of 48 hours.

#### 4. INFORMATION TO BE PROVIDED

- 4.1. When Introducing a Temporary Contractor to the Client the Employment Business shall inform the Client:
- 4.1.1. of the identity of the Temporary Contractor;
  - 4.1.2. that the Temporary Contractor has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment;
  - 4.1.3. whether the Temporary Contractor will be employed by the Employment Business under a contract of service or apprenticeship or a contract for services;
  - 4.1.4. that the Temporary Contractor is willing to work in the Assignment; and
  - 4.1.5. the hourly charges of the Employment Business.
- 4.2. Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any Public or Bank Holiday) following, save where the Temporary Contractor is Introduced for an Assignment in the same position as one in which the Temporary Contractor had previously been supplied within the previous 5 business days and such information has already been given to the Client, unless the Client requests that the information be resubmitted.

#### 5. TIMESHEETS

- 5.1. At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of 1 week or less) the Client shall sign the Employment Business' timesheet verifying the number of hours worked by the Temporary Contractor during that week.
- 5.2. Signature of the timesheet by the Client is confirmation of the number of hours worked. If the Client is unable to sign a timesheet produced for authentication by the Temporary Contractor because the Client disputes the hours claimed, the Client shall inform the Employment Business as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what hours, if any, were worked by the Temporary Contractor. **Failure to sign the timesheet does not absolve the Client of its obligation to pay the charges in respect of the hours worked.**
- 5.3. The Client shall not be entitled to decline to sign a timesheet on the basis that it is dissatisfied with the work performed by the Temporary Contractor. In the event that the Client is dissatisfied with the Temporary Contractor the provisions of clause 10.1 below shall apply.

#### 6. CHARGES

- 6.1. The Client agrees to pay such hourly charges of the Employment Business as notified to and agreed with the Client. The hourly charges are calculated according to

the number of hours worked by the Temporary Contractor (to the nearest quarter hour) and comprise the following:

- 6.1.1. the Temporary Contractor's hourly rate of pay;
  - 6.1.2. an amount equal to any statutory leave to which the Temporary Contractor is entitled and which is accrued during the course of an Assignment;
  - 6.1.3. employer's National Insurance contributions;
  - 6.1.4. 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; and
  - 6.1.5. the Employment Business' commission, which is calculated as a percentage of the Temporary Contractor's hourly rate.
- 6.2. The Employment Business reserves the right to vary the hourly charges agreed with the Client, by giving written notice to the Client, in order to comply with any additional liability imposed by statute or other legal requirement or entitlement.
- 6.3. The charges are invoiced to the Client on a weekly basis and are payable within 30 days of date of invoice once credit checks have been completed. VAT is payable at the applicable rate on the entirety of these charges.
- 6.4. The Employment Business reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.
- 6.5. No refunds are payable in respect of the charges of the Employment Business.
- 6.6. The Client's obligations under this clause 6 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.

## **7. PAYMENT OF THE TEMPORARY CONTRACTOR**

The Employment Business assumes responsibility for paying the Temporary Contractor and where appropriate, for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Temporary Contractor pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003.

## **8. TRANSFER FEES**

- 8.1. The Client shall be liable to pay a Transfer Fee if the Client Engages a Temporary Contractor Introduced by the Employment Business, either directly or through another employment business, or introduces the Temporary Contractor to a third party and such introduction results in an Engagement of the Temporary Contractor by the third party and:
- 8.1.1. where the Temporary Contractor has been supplied by the Employment Business, such Engagement takes place during the Assignment or within the Relevant Period; or
  - 8.1.2. where the Temporary Contractor has not been supplied, such Engagement takes place within 6 months from the date of the Introduction to the Client.

The Transfer Fee will be calculated in accordance with the Schedule.

- 8.2. If the Client wishes to Engage the Temporary Contractor either directly or through another employment business, without liability to pay a Transfer Fee the Client may, on giving thirteen week's written notice to the Employment Business, engage the Temporary Contractor for the Period of Extended Hire specified in the Schedule.
- 8.3. During such Period of Extended Hire the Employment Business shall supply the Temporary Contractor on the same terms on which s/he has or would have been supplied during the Assignment and in any case on terms no less favourable than those terms which applied immediately before the Employment Business received the notice in clause 8.2; and the Client shall continue to pay the charges set out in clause 6. If the Employment Business is unable to supply the Temporary Contractor for any reason outside its control for the whole or any part of the Period of Extended Hire; or the Client does not wish to hire the Temporary Contractor on the same terms as the Assignment; but the Temporary Contractor is Engaged by the Client, the Client shall pay the Transfer Fee, reduced pro-rata to reflect any charges paid by the Client during any part of the Period of Extended Hire worked by the Temporary Contractor before being Engaged by the Client. If the Client fails to give notice of their intention to Engage the Temporary Contractor before the Engagement commences, the parties agree that the Transfer Fee shall be due in full.
- 8.4. Where prior to the commencement of the Engagement the Employment Business and the Client agree that the Engagement will be on the basis of a fixed term of less than 12 months, the Employment Business may, in its absolute discretion, reduce the Transfer Fee as calculated in accordance with the Schedule pro-rata. Such reduction is subject to the Client Engaging the Temporary Contractor for the agreed fixed term. Should the Client extend the Temporary Contractor's Engagement or re-Engage the Temporary Contractor within 12 months from the commencement of the initial Engagement the Employment Business reserves the right to recover the balance of the Transfer Fee.
- 8.5. No refund of the Transfer Fee will be paid in the event that the Engagement by the Client, either directly or through another employment business, or by a third party, terminates or terminates before the end of the fixed term referred to in Clause 8.4.
- 8.6. VAT is payable in addition to any fee due.

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

- 9.1. Where the Temporary Contractor is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment or the Assignment involves working with, caring for or attending one or more Vulnerable Persons the Employment Business will take all reasonably practicable steps to obtain and offer to provide copies to the Client of:
- 9.1.1. any relevant qualifications or authorisations of the Temporary Contractor; and
- 9.1.2. two references from persons who are not relatives of the Temporary Contractor and who have agreed that the references they provide may be disclosed to the Client;

and such other reasonably practicable steps as are required to confirm that the Temporary Contractor is suitable for the Assignment. If the Employment Business has taken all reasonably practicable steps to obtain the information above and has been

unable to do so fully it shall inform the Client of the steps it has taken to obtain this information in any event.

- 9.2. The Client shall advise the Employment Business at the time of instructing the Employment Business to supply a Temporary Contractor, or if it is not reasonably practicable, at the very latest, prior to the commencement of the Assignment, whether during the course of the Assignment, the Temporary Contractor will be required to work with, care for or attend one or more Vulnerable Persons or engage in activity or otherwise be working in a position covered by the Safeguarding Vulnerable Groups Act 2006 [or equivalent legislation in Scotland or Northern Ireland]
- 9.3. The Client shall assist the Employment Business by providing any information required to allow the Employment Business to comply with its statutory obligations under the Safeguarding Vulnerable Groups Act 2006 and to allow the Employment Business to select a suitable Temporary Contractor for the Assignment.
- 9.4. In particular in the event that the Client removes a Temporary Contractor from an Assignment in circumstances which would require the Employment Business to provide information to the Independent Safeguarding Authority [or equivalent authority] under the Safeguarding Vulnerable Groups Act 2006 [or equivalent legislation in Scotland or Northern Ireland], the Client will provide sufficient information to the Employment Business to allow it to discharge its statutory obligations.

## **10. UNSUITABILITY OF THE TEMPORARY CONTRACTOR**

- 10.1. . If the Client reasonably considers that the services of the Temporary Contractor are unsatisfactory, the Client may terminate the Assignment either by instructing the Temporary Contractor to leave the Assignment immediately, or by directing the Employment Business to remove the Temporary Contractor. The Employment Business may, in its absolute discretion, in such circumstances, reduce or cancel the charges for the time worked by that Temporary Contractor, provided that the Client has notified the Employment Business immediately that they have asked the Temporary Contractor to leave the Assignment or the Assignment terminates:
- 10.1.1. within 4 hours of the Temporary Contractor commencing the Assignment where the Assignment is for more than 7 hours; or
- 10.1.2. within 2 hours for Assignments of 7 hours or less;
- and provided that notification of the unsuitability of the Temporary Contractor is confirmed in writing to the Employment Business within 48 hours of the termination of the Assignment.
- 10.2. The Employment Business shall notify the Client immediately if it receives or otherwise obtains information which gives the Employment Business reasonable grounds to believe that a Temporary Contractor supplied to the Client is unsuitable for the Assignment and shall be entitled to terminate the Assignment forthwith without prior notice and without liability. Notwithstanding, the Client shall remain liable for all such hourly charges incurred prior to the termination of the Assignment.
- 10.3. The Client shall notify the Employment Business immediately and without delay and in any event within 2 hours if the Temporary Contractor fails to attend work or has notified the Client that they are unable to attend work for any reason.

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



Any of the Client, the Employment Business or the Temporary Contractor may terminate an Assignment at any time without prior notice and without liability (except in the case of termination by the Client, who shall be liable for any charges due under clause 6 above).

## **12. CONFIDENTIALITY AND DATA PROTECTION**

All information relating to a Temporary Contractor is confidential and subject to the Data Protection Act 1998 ("DPA") and is provided solely for the purpose of providing work-finding services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the DPA in receiving and processing the data at all times. In addition information relating to the Employment Business' business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.

## **13. INTELLECTUAL PROPERTY RIGHTS**

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

## **14. LIABILITY**

- 14.1. Whilst reasonable efforts are made by the Employment Business to give satisfaction to the Client by ensuring reasonable standards of skill, integrity and reliability from the Temporary Contractor and to provide the same in accordance with the Assignment details as provided by the Client no liability is accepted by the Employment Business for any loss, expense, damage or delay arising from any failure to provide any Temporary Contractor for all or part of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Temporary Contractor or if the Temporary Contractor terminates the Assignment for any reason. For the avoidance of doubt, the Employment Business does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.
- 14.2. Temporary Contractors supplied by the Employment Business are engaged under contracts for services. They are not the employees of the Employment Business. The Client agrees to be responsible for all acts, errors or omissions of the Temporary Contractor, whether wilful, negligent or otherwise as though the Temporary Contractor was on the payroll of the Client.
- 14.3. 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 Contractor and about any requirements imposed by law or by any professional body, which must be satisfied if the Temporary Contractor is to fill the Assignment. The Client will also comply in all respects with all statutory provisions as are in force from time to time including, for the avoidance of doubt, but not limited to the Working Time Regulations 1998 (as amended), Health and Safety At Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999, 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 7 above), including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Temporary Contractor during all Assignments.



- 14.4. The Client undertakes not to request the supply of a Temporary Contractor to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by a worker who has been transferred by the Client to perform the duties of a person on strike or taking official industrial action.
- 14.5. The Client shall indemnify and keep indemnified the Employment Business against any costs, claims, damages, expenses or liabilities incurred by the Employment Business arising out of any Assignment or arising out of any non-compliance with, and/or as a result of any breach of, these Terms by the Client.
- 14.6. The Client undertakes that it knows of no reason why it would be detrimental to the interests of the Temporary Contractor for the Temporary Contractor to fill the Assignment.

## 15. NOTICES

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, by email or facsimile transmission. Any such notice shall be deemed to have been served: if by hand when delivered, if by first class post 48 hours following posting and if by email or facsimile transmission, when that email or facsimile is sent.

## 16. SEVERABILITY

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

## 17. GOVERNING LAW AND JURISDICTION

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

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***Signed for and on behalf of the Client***

**Print name**

**I confirm I am authorised to sign this Agreement on behalf of the Client.**

Date \_\_\_\_\_



## **SCHEDULE: TRANSFER FEES**

The Transfer Fee referred to in Clause 8 shall be calculated as follows: 25% of the Remuneration payable to the Temporary Contractor during the first 12 months of the Engagement.

The Period of Extended Hire, referred to in Clause 8, before the Client Engages a Temporary Contractor shall be: 13 weeks.