

**MRK ASSOCIATES LTD**

**TERMS OF ENGAGEMENT FOR TEMPORARY WORKERS (PAYE)**

**Date Written** 1<sup>st</sup> October 2011

(1) MRK Associates Ltd whose registered office is at 1 Harvest Turn, Icknield Way, Tring, Hertfordshire HP23 4ET (hereinafter called the "Employment Business")

(2) ..... of .....  
(hereinafter called the "Temporary Worker")

**1 Definitions**

1.1 In these terms of engagement the following definitions apply:

- "AWR"** means the Agency Workers Regulations 2010.
- "Assignment"** means the period of time during which the Temporary Worker is supplied by the Employment Business to the Client to work temporarily for and under its direction, supervision and control.
- "Confidential Information"** means any and all confidential commercial, financial, marketing, technical or other information or data of whatever nature relating to the Client or Employment Business or their business or affairs (including but not limited to these terms of engagement, data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information concerning the Assignment) in any form or medium whether disclosed or granted access to whether in writing, orally or by any other means, provided to the Temporary Worker.
- "Client"** means any person, firm or corporate body together with any subsidiary (as defined in section 1159 of the Companies Act 2006) or associated person, firm or corporate body requiring the services of the Temporary Worker and to whom the Temporary Worker is supplied or introduced.

<b>“Enhanced Rate of Pay”</b>	means the rate of pay paid to the Temporary Worker following completion of the Qualifying Period with the Client. Such rate will be paid for each hour/day worked on an Assignment (to the nearest quarter hour/half day) to be paid weekly in arrears subject to deductions in respect of PAYE pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003 and Class 1 National Insurance Contributions or any other deductions the Employment Business is required to make by law.
<b>“Personal Data”</b>	means such data as defined in section 1(1) of the Data Protection Act 1998
<b>“Qualifying Period”</b>	means 12 continuous calendar weeks during the whole or part of which the Temporary Worker is supplied by one or more Temporary Work Agencies to the relevant Client to work temporarily for and under the supervision and direction of the relevant Client in the same role, and as further defined in regulation 7 of the AWR.
<b>"Rate of Pay"</b>	means the rate of pay that the Temporary Worker will be paid for each hour/day worked on an Assignment (to the nearest quarter hour/ half day) to be paid weekly in arrears subject to deductions in respect of PAYE pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003 and Class 1 National Insurance Contributions.
<b>“Relevant Period”</b>	means the longer of: <ul style="list-style-type: none"> <li>(a) the period of 8 weeks commencing on the day after the last day on which the Temporary Worker worked for the Client having been supplied by the Employment Business; or</li> <li>(b) the period of 14 weeks commencing on the first day ("FD") on which the Temporary Worker worked for the Client having been supplied by the Employment Business. In determining the FD, no account shall be taken of any supply that occurred prior to a period of more than 42 days during which the Temporary Worker did not work for the Client pursuant to being supplied by the Employment Business.</li> </ul>
<b>“Sensitive Personal Data”</b>	means such data as defined in section 2 of the Data Protection Act 1998.
<b>"Temporary Work Agency"</b>	means as defined in regulation 4 of the AWR.

- 1.2 References to the singular include the plural and vice versa unless the context otherwise requires.
- 1.3 The headings contained in these terms of engagement are for convenience only and do not affect their interpretation.
- 1.4 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

## **2 THE CONTRACT**

- 2.1 These terms of engagement constitute a contract for services between the Employment Business and the Temporary Worker (together with the applicable assignment details form) and they govern each and every Assignment undertaken by the Temporary Worker. For the avoidance of doubt, no contract shall exist between Assignments between the Employment Business and the Temporary Worker or if the Temporary Worker is absent from an Assignment for any reason except authorised absence.
- 2.2 These terms of engagement shall not give rise to a contract of employment between the Employment Business and the Temporary Worker notwithstanding that the Employment Business is required by law to make deductions from the Temporary Worker's fees in accordance with clause 7 below.
- 2.3 No variation or alteration of these terms of engagement shall be valid unless approved by a duly authorised manager or a director of the Employment Business in writing and unless agreed with the Temporary Worker in writing. The Employment Business acknowledges and confirms that it is also required to ensure that a copy of any such agreed variation is provided to the Temporary Worker and that the Temporary Worker is to be notified in such written communication of the date from which the variation is to take effect.
- 2.4 These terms of engagement supersede and replace all previous terms of engagement between the Employment Business and the Temporary Worker.
- 2.5 In respect of these terms of engagement the Employment Business acts as an employment business as defined in sections 13(1) and 13(3) of the Employment Agencies Act 1973.

## **3 ASSIGNMENTS**

- 3.1 The Employment Business will endeavour to obtain suitable Assignments for the Temporary Worker. However, in view of the fact that the Temporary Worker is not employed by the Employment Business under a contract of service, the Temporary Worker is under no obligation to accept any offer of an Assignment made by the Employment Business.

- 3.2 The Temporary Worker acknowledges that the nature of temporary work means that there may be periods when no suitable work is available and he/she agrees:-
- 3.2.1 that suitability shall be determined solely by the Employment Business; and
  - 3.2.2 that the Employment Business shall incur no liability towards the Temporary Worker should it fail to offer opportunities for work in the category specified in sub-clause 3.1 above or in any other category.
- 3.3 For the purpose of calculating the Temporary Worker's average number of weekly hours/ days worked on any Assignment, the relevant averaging period pursuant to the Working Time Regulations 1998 shall commence on the date upon which the Temporary Worker commences his/her first Assignment.
- 3.4 Prior to or at the same time that the Employment Business makes an offer of an Assignment to the Temporary Worker, the following information will be supplied by the Employment Business to the Temporary Worker:-
- 3.4.1 the identity of the Client and, where necessary, details of the nature of the Client's business;
  - 3.4.2 the type of work to be undertaken by the Temporary Worker for the Client during the Assignment;
  - 3.4.3 the commencement date of the Assignment and its actual or likely duration;
  - 3.4.4 the location of the Assignment and the hours during which the Temporary Worker will be required to work for the Client during the Assignment;
  - 3.4.5 the level of fees to be paid by the Employment Business to the Temporary Worker together with details of any expenses payable in respect of the Assignment;
  - 3.4.6 any risks to the health and safety of the Temporary Worker in respect of the Assignment which are in the knowledge of the Client and which have been communicated to the Employment Business by the Client together with details of any and all steps that the Client has taken or intends to take to prevent or control any such risks;
  - 3.4.7 what, if any, experience, training, qualifications and authorisation(s) are necessary or required by law or any professional body and which are considered necessary by the Client or which are legal requirements in order for the Temporary Worker to undertake the Assignment.
- 3.5 If the Employment Business supplies the information above in a form other than on paper or electronically then it shall be confirmed on paper or electronically by no later than the end of the third business day (which excludes Saturdays, Sundays and any and all Bank, public or statutory holidays) thereafter except where the Temporary Worker is being offered an Assignment by the Employment Business which is in respect of the same position as one which the Temporary Worker has previously

been supplied by the Employment Business within the previous five business days and where such information has already been provided to the Temporary Worker by the Employment Business and remains unchanged.

- 3.6 Where the Employment Business intends to introduce or supply a Temporary Worker to a Client for an Assignment of five consecutive business days or less and the Employment Business has previously provided the Temporary Worker with the information set out in sub-clause 3.4 and that information remains unchanged, sub-clause 3.4.2 and 3.4.4 to 3.4.7 will not apply.
- 3.7 Where an Assignment to which sub-clause 3.6 applies is extended beyond the duration of five business days, the information referred to in sub-clause 3.4.2 and 3.4.4 to 3.4.7 shall be provided in paper form or by electronic means by the end of the eighth business day from the start of the Assignment, or by the end of the Assignment if sooner.
- 3.8 The Temporary Worker should be aware that the Employment Business is entitled to charge the Client a fee where, during the Relevant Period or before the first Assignment or during the course of an Assignment, the Client engages the Temporary Worker directly or through another employment business. No such fee can be charged, however, if the Client accepts an extension of the original Assignment. Further, the Employment Business can charge the Client a fee if the Client introduces the Temporary Worker to a third party who subsequently engages the Temporary Worker directly or indirectly, before or during an Assignment or within the Relevant Period.
- 3.9 If the Temporary Worker completes the Qualifying Period on the start date of the relevant Assignment or during the relevant Assignment, and the Temporary Worker is entitled to terms and conditions relating to the duration of working time, night work, rest periods and/or rest breaks under the AWR which are different and preferential to rights and entitlements relating to the same under the Working Time Regulations 1998, any such terms and conditions will be notified to the Temporary Worker in writing.
- 3.10 Following completion of the Qualifying Period, if the Temporary Worker considers that he/she has not or may not have received equal treatment under the AWR, the Temporary Worker may raise this in writing with the Employment Business setting out the full details and the basis of his/her concerns.

#### **4 STATUTORY LEAVE AND SICKNESS ABSENCE**

- 4.1 The Temporary Worker is entitled to paid annual leave in accordance with the 5.6 weeks current statutory minimum under the Working Time Regulations 1998. The leave year is calculated from the day the Temporary Worker starts an Assignment or a series of Assignments. All of the entitlement to annual leave must be taken during the course of the leave year in which it accrues and none may be carried forward to the next leave year. The entitlement accrues pro rata to the amount of time the Temporary Worker is engaged during the leave year. For purposes of taking leave

fractions may be rounded up in half days but payment will be based on the fraction due.

- 4.2 Normally the amount of payment to which the Temporary Worker is entitled in respect of paid leave is calculated at the daytime rate in accordance with and in proportion to the number of standard hours/days the Temporary Worker works on Assignments (which does not include overtime unless it is guaranteed and obligatory for the Temporary Worker to undertake). If the standard hours vary during accrual period, paid leave entitlement will be calculated as an average of weekly payments for hours worked during the 12 week period prior to the week in which paid leave is taken.
- 4.3 Under the AWR, on completion of the Qualifying Period the Temporary Worker may be entitled to paid and/or unpaid annual leave in addition to the Temporary Worker's entitlement to paid annual leave under the Working Time Regulations 1998 and in accordance with sub-clauses 4.1 and 4.2. If this is the case, any such enhanced entitlement and how such entitlement will accrue will be notified to the Temporary Worker in writing.
- 4.4 At the end of each month or when the Temporary Worker wishes to take some or all of the paid leave to which the Temporary Worker is entitled, the Temporary Worker should notify the Employment Business in writing in advance of the dates of the Temporary Worker's intended absence. The amount of notice should be at least twice the length of the period of leave that the Temporary Worker wishes to take. In certain circumstances the Employment Business may give counter-notice to the Temporary Worker to postpone or reduce the amount of leave that the Temporary Worker wishes to take and in such circumstances the Employment Business will inform the Temporary Worker in writing giving at least the same length of notice as the period of leave that has been requested. Public or Bank Holidays not worked will not be paid unless the Temporary Worker notifies the Employment Business that he/she wishes to take them as part of the Temporary Worker's statutory annual entitlement.
- 4.5 If the Temporary Worker leaves the engagement of the Employment Business with any outstanding paid holiday entitlement then he/she will, (in addition to any other sums to which he/she may be entitled), be paid a sum representing pay for the accrued but untaken holiday entitlement outstanding.
- 4.6 The Temporary Worker is entitled to receive Statutory Sick Pay subject to complying with the relevant statutory criteria.
- 4.7 Subject to any entitlement under relevant legislation and/or unless specifically agreed in writing to the contrary, the Temporary Worker is not entitled to payment from the Employment Business or its Clients for time not spent on Assignment whether in respect of holidays, illness or absence for any other reason.
- 4.8 None of the provisions of this clause shall affect the Temporary Worker's status as a self-employed worker.

## 5 TEMPORARY WORKERS OBLIGATIONS

- 5.1 The Temporary Worker is not obliged to accept any Assignment offered by the Employment Business but if he/she does so, during every Assignment and afterwards, as appropriate, he/she will:-
- 5.1.1 co-operate with the Client's staff and accept the direction, supervision and instruction of any responsible person in the Client's organisation;
  - 5.1.2 observe any and all relevant rules and regulations of the Client's establishment (including normal hours of work) to which attention has been drawn or which the Temporary Worker might reasonably be expected to ascertain;
  - 5.1.3 take all reasonable steps to safeguard his/her own safety and the safety of any other person who may be present or affected by his/her actions on the Assignment and comply with the health and safety policy of the Client;
  - 5.1.4 not engage in any conduct detrimental to the interests of the Client and/or the Employment Business which includes any conduct that could bring the Client and/or Employment Business into disrepute;
  - 5.1.5 not at any time divulge to any person or use for his/her or any other person's benefit any Confidential Information relating to the Client's or the Employment Business' employees, business affairs, transactions or finances; and
  - 5.1.6 at the end of each Assignment or at any time requested by the Client return all property, documents and all other materials provided to the Temporary Worker in connection with the Assignment.
- 5.2 Prior to the commencement of an Assignment, during any Assignment and at any time at the request of the Employment Business, the Temporary Worker undertakes to:
- 5.2.1 inform the Employment Business of any calendar weeks since 1 October 2011 whereby the Temporary Worker has worked in a similar role with the same Client via a third party or another Temporary Work Agency prior to the start of the relevant Assignment and/or during the relevant Assignment with the Employment Business which the Temporary Worker believes may count towards the Qualifying Period;
  - 5.2.2 provide the Employment Business in accordance with sub-clause 5.2.1 with all of the details regarding the assignment, including but not limited to the start date, its duration and any other information requested by the Employment Business;

- 5.2.3 prior to the commencement of a relevant Assignment or during a relevant Assignment inform the Employment Business if the Temporary Worker has since 1 October 2011:
- (a) undertaken two or more assignments with the Client; and/or
  - (b) worked in more than two roles with the Client during an assignment which were different roles.
- 5.3 If the Temporary Worker is unable for any reason to work on an Assignment he/she should inform the Employment Business [and the Client] by no later than 9.30 am on the first day of absence to enable alternative arrangements to be made.
- 5.4 If the Temporary Worker prior to or during an Assignment feels that he/she is unsuitable for the Assignment the Temporary Worker must inform the Employment Business without delay.

## **6 TIMESHEETS**

- 6.1 At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of less than one week or is completed before the end of a week) the Temporary Worker shall deliver to the Employment Business his/her timesheet duly completed to indicate the number of hours/days worked by the Temporary Worker during the preceding week or such shorter period and signed by an authorised representative of the Client.
- 6.2 If the Temporary Worker fails to comply with sub-clause 6.1 above, or the Client refuses to sign the timesheets for those hours, the Employment Business shall be entitled to make further enquiries of the Temporary Worker, the Client and/or any other relevant third party in order to ascertain the actual hours/days worked by the Temporary Worker. This may delay payment to the Temporary Worker. The Employment Business will not make payment to the Temporary Worker for hours/days claimed but not worked. Should it subsequently become apparent that the Temporary Worker has been overpaid then the Employment Business reserves the right to deduct any such overpayment from any subsequent fees due to the Temporary Worker and/or to recover any such overpayment (or part thereof) by way of legal proceedings against the Temporary Worker.
- 6.3 Subject to sub-clause 6.2, the Employment Business shall pay the Temporary Worker for all hours/days worked regardless of whether the Employment Business has received payment from the Client for those hours/days.
- 6.4 For the purposes of the Working Time Regulations 1998 the working time of the Temporary Worker shall only consist of those periods during which he/she is carrying out his/her activities for the Client as part of the Assignment. For the avoidance of doubt, time spent travelling to the Client's premises, lunch breaks and other rest breaks shall not count as part of the Temporary Worker's working time.



## **7 PAY**

- 7.1 The Employment Business shall pay the Temporary Worker who has not completed the Qualifying Period a Rate of Pay which will be notified in writing on a per Assignment basis.
- 7.2 If the Temporary Worker has completed the Qualifying Period on the start date of the relevant Assignment or following completion of the Qualifying Period during the relevant Assignment, the Employment Business shall pay to the Temporary Worker the Enhanced Rate of Pay, which will be notified to the Temporary Worker on a per Assignment basis in writing.
- 7.3 If for any reason the Temporary Worker is paid in advance for an Assignment but the Temporary Worker does not undertake or complete the hours/days for which the Temporary Worker has been paid in advance, the Employment Business reserves the right to deduct any over-payment from future remuneration (including, for the avoidance of doubt, any payment due in lieu of untaken accrued paid leave) and the Temporary Worker agrees that the Temporary Worker will be personally liable to repay any balance due to the Employment Business immediately upon demand.
- 7.4 The Employment Business reserves the right to (and the Temporary Worker authorises the Employment Business to) deduct any debts the Temporary Worker owes the Employment Business from fees due to him/her.

## **8 TERMINATION**

- 8.1 Either the Employment Business, Temporary Worker or the Client may, without prior notice and without liability, end the Temporary Worker's Assignment at any time.
- 8.2 If the Temporary Worker does not inform the Client or the Employment Business in accordance with sub-clause 5.3 should they be unable to attend work during the course of an Assignment this will be treated as termination of the Assignment by the Temporary Worker in accordance with sub-clause 8.1 unless the Temporary Worker can show that exceptional circumstances prevented the Temporary Worker from complying with sub-clause 5.3.
- 8.3 If the Temporary Worker is absent during the course of an Assignment and the Assignment has not been otherwise terminated under sub-clauses 8.1 or 8.2 above, the Employment Business will be entitled to terminate the Assignment in accordance with sub-clause 8.1 if the work to which the absent Temporary Worker was assigned is no longer available for the Temporary Worker.
- 8.4 If the Temporary Worker does not report to the Employment Business to notify the Employment Business of his/her availability for work for a period of 2 weeks, the Employment Business will forward the Temporary Worker's P45 to the Temporary Worker's last known address.

## **9 CONFIDENTIALITY**

- 9.1 The Temporary Worker agrees whether during or after an Assignment (without the prior consent of the Client or the Employment Business) not to disclose or make use of any trade secrets or Confidential Information of the Client or the Employment Business unless the information is already in the public domain.
- 9.2 The Temporary Worker must return to the Employment Business and/or the Client (whichever is applicable) forthwith on termination of the Assignment or at any time during the Assignment upon request by the Employment Business or the Client any Confidential Information which is in the Temporary Worker's possession or control in any format (whether prepared by the Temporary Worker or any other person and whether stored electronically on paper on audio or audio visual tape or otherwise). The Temporary Worker must not retain any copy or extract of such information in any format.

## **10 DATA PROTECTION**

The Temporary Worker consents to the Employment Business holding, processing and accessing both electronically and manually such records and Personal Data including Sensitive Personal Data provided by the Temporary Worker to the Employment Business and to the content of such records and data being disclosed to a third party (including the Client) for the purposes permitted or required by the Data Protection Act 1998. The Temporary Worker also consents to the transfer of Personal Data to the Client or any potential client or to third parties for administration purposes and other purposes in connection with Assignments and/or the search for Assignments.

## **11 INTELLECTUAL PROPERTY**

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

## **12 NOTICES**

All notices which are required to be given in accordance with these terms of engagement shall be in writing and may be delivered personally or by first 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.

## **13 LAW**

These terms of engagement shall be governed by and construed in accordance with the law of England and Wales and the Temporary Worker agrees to submit to the exclusive

jurisdiction of the courts of England and Wales in relation to any claim or matter arising out of these terms of engagement.

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**Signed by the Temporary Worker**

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**Print name**

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**Date**