

CONTRACT FOR SERVICES FOR TEMPORARY WORKERS

1st April 2019

1. DEFINITIONS

1.1 In these Terms of Engagement ("Terms") the following definitions apply:

"the EB" means Kate +Co, 2nd Floor, 141 High Street, Solihull, B91 3SR

"the TW" means person who is the temporary worker

Name

"Assignment" means the period during which the TW is engaged by the EB to render services to the Client;

"Client" means the person, firm or corporate body requiring the services of the TW together with any subsidiary or associated company as defined by the Companies Acts;

"Personal Data" means such data as defined in General Data Protection Regulation (GDPR) May 2018

"Relevant Period" means the longer period of either 14 weeks from the first day on which the TW worked for the Client, or 8 weeks from the date the TW last worked for the Client;
(Note: the first day is the first day of the first occasion or the first day of any subsequent Assignment if more than 42 days since the end of the previous Assignment).

"Sensitive

Personal Data means such data as defined in General Data Protection Regulation (GDPR) May 2018

"the AWR" means the Agency Workers' Regulations 2010

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

1.3 The headings in these Terms are for convenience only and do not affect their interpretation.

2. THE CONTRACT

2.1 These Terms constitute a contract for services between the EB and the TW and they govern all the TW's Assignments. No contract shall exist between the EB and the TW either between Assignments, or if the TW is absent from an Assignment for any reason except authorised absence.

2.2 For the avoidance of doubt, these Terms shall not give rise to a contract of employment between the EB and the TW. The EB is required to make statutory deductions from the TW's remuneration in accordance with Clause 7.

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

2.4 The TW agrees to notify the EB in writing of his work history for the 10 year period prior to the commencement of this contract for services and hereby warrants the accuracy of any such information provided. .

ASSIGNMENTS

3.1 The EB will endeavour to obtain suitable Assignments for the TW to work in general office work. The TW is not obliged to accept any Assignment the EB offers.

3.2 The TW acknowledges the nature of temporary EB work means there may be periods when no suitable work is available and agrees that:

3.2.1 suitability shall be determined solely by the EB; and

3.2.2 the EB shall incur no liability should it fail to offer the TW opportunities to work in the category applied for or in any other category.

3.2.3 and that no contract shall exist between the TW and the EB during periods when the TW is not working on an Assignment

3.3 For the purpose of calculating the average number of weekly hours worked by the TW on an Assignment, the start date for the relevant averaging period under the Working Time Regulations 1998 is Monday of the week in which the TW commences their first Assignment.

3.4 If, either before or during an Assignment, the TW becomes aware of any reason why he may not be suitable for the Assignment the TW shall notify the EB without delay.

3.5 When an Assignment is offered to the TW and subject to the TW's acceptance, the EB shall inform the TW of the identity of the Client, and if applicable, the nature of their business; the date work is to commence and duration or likely duration of the work; the type of work, the location and hours during which the TW would be required to work; the rate of remuneration that will be paid and any expenses payable by or to the TW; any risks to health and safety known to the Client and steps that the Client has taken to prevent or control such risks; and any and all entitlements which the TW has or may have pursuant to Regulations 5, 6, 12 and 13 of the AWR. In addition the EB shall inform the TW what experience, training, qualifications and any authorisation required by law or a professional body the Client considers necessary or which are required by law to work in the Assignment.

3.6 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 Public or Bank Holidays) following, save where the TW is being offered an Assignment in the same position as one in which the TW has been supplied in the previous 5 business days and such information has already been given to the TW. Any variation of the Assignment terms shall be agreed in advance with the TW and similarly confirmed.

3.7 If, before the first Assignment, during the course of an Assignment or within the Relevant Period, the Client wishes to employ or engage the TW directly or through another employment business, the TW acknowledges that the EB will be entitled either to charge the Client a fee or to agree an extension of the hiring period with the Client, at the end of which the TW may be employed or engaged directly by the Client or through another employment business without further charge to the Client. In addition the EB will be entitled to charge a fee to the Client if they introduce the TW to a third party who subsequently engages the TW within the Relevant Period.

4. **ABSENCE FROM ASSIGNMENT**

If the TW is unable for any reason to attend work during an Assignment, the TW should inform the EB as soon as possible to enable alternative arrangements to be made.

5. **TERMINATION**

5.1 The EB or the Client may terminate the TW's Assignment at any time without prior notice or liability.

5.2 The TW may terminate an Assignment at any time without prior notice or liability.

5.3 If the TW does not inform the Client or the EB in accordance with clause 6.2 should they be unable to attend work during the course of an Assignment this will be treated as termination of the Assignment by the TW in accordance with clause 6.2 unless the TW can show that exceptional circumstances prevented the TW from complying with clause 6.2.

5.4 If the TW is absent during the course of an Assignment and the contract has not been otherwise terminated under clauses 5.1, 5.2 or 5.3 above, the EB will be entitled to terminate the contract in accordance with clause 5.1 if the work to which the absent TW was assigned is no longer available for the TW.

5.5 If the TW does not report to the EB to notify the TW's availability for work for a period of 3 weeks, the EB will forward the TW's P45 to the TW's last known address.

6. **CONDUCT**

6.1 The TW is not obliged to accept any Assignment offered by the EB but if the TW does so, during every Assignment and afterwards, as appropriate, the TW will:

6.1.1 co-operate with the Client's reasonable instructions and accept the direction, supervision and control of any responsible person in the Client's organisation;

6.1.2 observe any relevant rules and regulations of the Client's establishment (including hours of work as notified) to which the TW's attention has been drawn or which the TW might reasonably be expected to ascertain;

6.1.3 take all reasonable steps to safeguard the TW's own safety and the safety of any other person who may be present or affected by the TW's actions on the Assignment and comply with the health and safety policies and procedures of the Client;

6.1.4 not engage in any conduct detrimental to the interests of the Client;

6.1.5 not at any time divulge to any person, nor use for the TW's own or any other person's benefit, any confidential information relating to employees, business affairs, transactions or finances of Clients or the EB; and

6.1.6 not use the telephone, fax or computer systems belonging to the Client for personal gain or benefit.

6.2 If the TW is unable for any reason to attend work during the course of an Assignment they should inform the Client and the EB within [one] hour of the commencement of the Assignment or shift.

7. REMUNERATION

Subject to any rights or entitlements pursuant to the AWR the EB shall pay the TW remuneration calculated at the National Minimum Wage hourly rate of £6.15 per hour between the ages of 18 -20, £7.70 per hour for age 21 - 24 and £8.21 for 25 and over for all hours worked. The actual rate will be notified on a per Assignment basis, for each hour worked during an Assignment (to the nearest quarter of an hour) to be paid weekly, one week 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 I National Insurance Contributions and any other deductions which the EB may be required by law to make. Subject to any statutory entitlement under the relevant legislation, the TW is not entitled to receive payment from the EB or its Clients for time not spent on an Assignment, whether in respect of holidays (except see clause 9), illness or absence or any other reason unless otherwise agreed in writing between the EB and the TW. If for any reason the TW is paid in advance for an Assignment but the TW does not undertake or complete the hours for which the TW has been paid in advance, the EB 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 TW agrees that the TW will be personally liable to repay any balance due to the EB immediately upon demand.

8. TIME SHEETS

At the end of each week of an Assignment (or at the end of an Assignment where it is for a period of one week or less or is completed before the end of a week) the TW shall deliver to the EB the TW's completed time sheet to indicate the number of hours the TW has worked during the preceding week (or such lesser period) and signed by an authorised representative of the Client. The EB shall pay the TW for all hours worked regardless of whether the EB has received payment from the Client for those hours. Where the TW fails to submit a properly authenticated time sheet the EB shall, in a timely fashion, conduct further investigations into the hours claimed by the TW and reasons the Client has refused to sign a time sheet for those hours. This may delay any payment due to the TW. The EB shall not make any payment to the TW for hours not worked. For the avoidance of doubt and the purposes of the Working Time Regulations 1998, the TW's working time (which will normally also be hours worked for which the TW will be paid) shall only consist of those periods during which the TW is carrying out activities or duties for the Client as part of the Assignment. Subject to the AWR time spent travelling to the Client's premises, lunch breaks and other rest breaks shall not count as working time.

9. STATUTORY LEAVE

9.1 The provisions of this clause 9 are subject to the AWR.

9.2 Under Working Time Regulations the TW is entitled to a statutory period of paid leave of 5.6 weeks (28 days) per year, pro rata. For calculating the entitlement to leave under this clause, the leave year commences on the date the TW starts an Assignment or a series of Assignments. All of the entitlement to 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 TW 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. For the avoidance of doubt, the leave years runs from 1st January to 31st December.

9.3 Normally the amount of payment to which the TW 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 (not overtime) the TW works on Assignments. 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.

9.4 At the end of each month or when the TW wishes to take some or all of the paid leave to which the TW is entitled, the TW should notify the EB in writing in advance of the dates of the TW's intended absence. The amount of notice should be at least twice the length of the period of leave that the TW wishes to take. In certain circumstances the EB may give counter-notice to the TW to postpone or reduce the amount of leave that the TW wishes to take and in such circumstances the EB will inform the TW 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 TW notifies the EB that he wishes to take them as part of the TW's statutory annual entitlement.

9.5 Where this contract is terminated by either party and a P45 issued, the TW is entitled to a payment in lieu of any untaken accrued paid leave. Failure to formerly request holiday pay prior to the issue of the TW's P45 will result in loss of any accrued holiday payment entitlement.

9.6 For the avoidance of doubt, none of the provisions of this clause shall affect the TW's status as a self-employed worker.

10 Agency Workers Directive (Agency Workers Regulations 2010)

10.1 These Regulations came into effect on 01/10/2011. Broadly they provide all agency workers on assignment the right to equal treatment after 12 weeks on assignment. This may or may not alter your initially agreed remuneration and terms. In the event of your assignment exceeding 12 weeks you will be provided with further information and terms relating to your assignment. We will have made enquiries of our client as to whether any additional terms would apply to your specific assignment on the basis of comparing it to specific comparable permanent employment terms with that client. Whilst not exclusive this will include reviewing basic working and employment conditions such as:

- ❖ Pay
- ❖ Working Time
- ❖ Overtime/Shift Periods
- ❖ Holiday Pay
- ❖ Access to facilities/amenities and employment opportunities (these rights are available to all workers on commencement of the assignment).

Without affecting your statutory rights we reserve the right to assess and calculate any monetary difference between your terms before and after the 12 week period and any difference may be paid as remuneration e.g. any additional holiday entitlement over statutory minimum will be paid in lieu.

- 10.2 You additionally have the right after 12 weeks to request from us and/or the Client a written statement within 28 days about any aspect of equal treatment you may be concerned about.
- 10.3 Please ensure you inform your consultant if you have ever worked for this particular client before.

11. DATA PROTECTION AND DISCLOSURE OF INFORMATION

11.1 The TW consents to the EB holding, processing and accessing both electronically and manually such records and Personal Data including Sensitive Personal Data provided by the TW to the EB 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 Act. The TW 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.

11.2 The EB agrees that it will not disclose any confidential information about the TW without his/her prior consent unless it is:

11.2.1 to provide work-finding services for the TW in accordance with the terms of this agreement;

11.2.2 for the purposes of any legal proceedings (including arbitration); or

11.2.3 in the case of a TW who is a member of a professional body, the provision of information to that Professional body.

11.3 Nothing in clause 11.2 shall preclude the EB from disclosing information about the TW where it is entitled to do so under the provisions of the Employment Agencies Act 1973, the Conduct of Employment Agencies and Employment Business Regulations 2003 (as amended), the Data Protection Act 1998 or as it is otherwise entitled to do by law.

12. PENSION

The EB operates an auto enrolment workplace pension scheme managed by Now Pensions. Please refer to the attached employees guide to auto enrolment leaflet. .

13. LAW

These Terms are governed by the laws of England and Wales and are subject to the exclusive jurisdiction of the Courts of England and Wales.

Signed by the Temporary Worker..... Date.....

<p><u>OPTING OUT OF THE 48 HOUR WEEK</u></p> <p>You can choose to work more than 48 hours a week on average if you are over 18. This is called 'opting out'.</p> <p>Your employer can ask you to opt out, but you can't be sacked or treated unfairly for refusing to do so.</p> <p>You can opt out for a certain period or indefinitely. It must be voluntary and in writing.</p> <p>I _____(full name) agree that I may work for more than an average of 48 hours a week.</p> <p>If I change my mind, I will give my employer -----(up to 3 months) notice in writing to end this agreement</p> <p>Signed: _____ Dated: _____</p>
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