



# **TERMS AND CONDITIONS OF BUSINESS**

## **FOR THE SUPPLY OF**

## **TEMPORARY WORKERS**

*Providing unparalleled commitment to temporary  
and permanent recruitment services nationwide.*

# **TERMS AND CONDITIONS OF BUSINESS**

## **1. DEFINITIONS AND INTERPRETATION**

1.1. In these Terms the following definitions apply:

<b>“Assignment”</b>	means the intermediary services to be performed by the Temporary Worker for the Hirer for a period of time during which the Temporary Worker is supplied by the Employment Business to the Hirer;
<b>“AWR”</b>	means the Agency Workers Regulations 2010 and applies to clauses and Temporary Workers where they are supplied by the Employment Business to work temporarily for and under the supervision and direction of the Hirer.
<b>“AWR Claim”</b>	means any complaint or claim to a tribunal or court made by or on behalf of the Temporary Worker against the Hirer and/or the Employment Business for any breach of the AWR;
<b>“Calendar Week”</b>	means any period of seven days starting with the same day as the first day of the First Assignment;
<b>“Charges”</b>	means the Employment Business’s charges calculated in accordance with clause 6 and as may be varied from time to time in accordance with these Terms;
<b>“Comparable Employee”</b>	means as defined in Schedule 1 to these Terms;
<b>“Conduct Regulations”</b>	means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
<b>“Confidential Information”</b>	means any and all confidential commercial, financial, marketing, technical or other information or data of whatever nature relating to the Hirer or Employment Business or their business or affairs (including but not limited to these Terms, 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 or any third party in relation to the Assignment by the Hirer or the Employment Business or by a third party on behalf of the Hirer whether before or after the date of these Terms together with any reproductions of such information in any form or medium or any part(s) of such information;
<b>“Control”</b>	means (a) the legal or beneficial ownership, directly or indirectly, of more than 50% of the issued share capital or similar right of ownership; or (b) the power to direct or cause the direction of the affairs and/or general management of the company, partnership, statutory body or other entity in question, whether through the ownership of voting capital, by contract or otherwise, and "Controls" and "Controlled" shall be construed accordingly;
<b>“Data Protection Laws”</b>	means the Data Protection Act 1998, the General Data Protection Regulation (EU 2016/679) and any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data;
<b>“Employment Business”</b>	Diamond Construction & Engineering Recruitment Ltd (registered company no. 02731679) of Elm Court, Southend Road, Wickford, Essex, SS11 8DU.
<b>“Engagement”</b>	means the engagement (including the Temporary Worker’s acceptance of the Hirer’s offer), employment or use of the Temporary Worker by the Hirer or by any third party to whom the Temporary Worker has been introduced by the Hirer, on a permanent or temporary basis, whether under a contract of service or for services; under an agency, licence, franchise or partnership agreement; or any other engagement; or through a limited company of which the Temporary Worker is an officer, employee or other representative; and “Engage”, “Engages” and “Engaged” shall be construed accordingly;
<b>“First Assignment”</b>	means: (a) the relevant Assignment; or (b) if, prior to the relevant Assignment: (i) the Temporary Worker has worked in any assignment in the same role with the relevant Hirer as the role in which the Temporary Worker works in the relevant Assignment; and (ii) the relevant Qualifying Period commenced in any such assignment, that assignment (an assignment being (for the purpose of this defined term) a period of time during which the Temporary Worker is supplied by one or more Temporary Work Agencies to the relevant Hirer to work temporarily for and under the supervision and direction of the relevant Hirer);
<b>“Hirer”</b>	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 Worker is introduced;
<b>“Hirer’s Group”</b>	means (a) any individual, company, partnership, statutory body or other entity which from time to time Controls the Hirer, including (but not limited to) as a holding company as defined in section 1159 of the Companies Act 2006; and (b) any company, partnership, statutory body or other entity which from time to time is Controlled by or is under common Control with the Hirer, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006;

<b>"Introduction"</b>	means (i) the passing to the Hirer of a curriculum vitae or information which identifies the Temporary Worker, such as in the Labour Confirmation Correspondence; or (ii) the Hirer's interview of the Temporary Worker (in person or by telephone or by any other means), following the Hirer's instruction to the Employment Business to supply a temporary worker; or (iii) the supply of the Temporary Worker; and, in any case, which leads to an Engagement of the agency worker of the Temporary Worker; and "Introduced" and "Introducing" shall be construed accordingly;
<b>"ITEPA"</b>	means the Income Tax (Earnings and Pensions) Act 2003;
<b>"Labour Confirmation Correspondence"</b>	means written confirmation of the assignment details agreed with the Hirer prior to commencement of the Assignment in accordance with clause 4;
<b>"Losses"</b>	means all losses, liabilities, damages, costs, expenses, fines, penalties or interest, whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees, including loss and costs incurred through engaging debt collection agents) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands and "Loss" shall be construed accordingly;
<b>"NICs Legislation"</b>	means the Social Security (Categorisation of Earners) Regulations 1978;
<b>"Payroll Companies"</b>	means a payroll company that processes and pays the Temporary Worker on behalf of the Employment Business for temporary contract assignments undertaken on behalf of the Hirer and the Employment Business;
<b>"Public Authority"</b>	means a public authority (a) as defined in the Freedom Of Information Act and (b) as further defined in Section 61L ITEPA;
<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 Hirer to work temporarily for and under the supervision and direction of the relevant Hirer in the same role, and as further defined in Schedule 1 to these Terms;
<b>"Relevant Period"</b>	means the later of (a) the period of 8 weeks commencing on the day after the <u>last</u> day on which the Temporary Worker worked for the Hirer having been supplied by the Employment Business; or (b) the period of 14 weeks commencing on the <u>first</u> day on which the Temporary Worker worked for the Hirer 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;
<b>"Relevant Terms and Conditions"</b>	means terms and conditions relating to: <ul style="list-style-type: none"> <li>(a) pay;</li> <li>(b) the duration of working time;</li> <li>(c) night work;</li> <li>(d) rest periods;</li> <li>(e) rest breaks; and</li> <li>(f) annual leave</li> </ul> that are ordinarily included in the contracts of employees or workers (as appropriate) of the Hirer whether by collective agreement or otherwise and including (for the avoidance of doubt and without limitation) any such terms and conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation;
<b>"Remuneration"</b>	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 Worker for services provided to or on behalf of the Hirer or any third party. Where a company car is provided, a notional amount, as agreed in writing by the Hirer with the Employment Business, will be added to the salary in order to calculate the Employment Business's fee and subsequent Transfer Fee;
<b>"Temporary Work Agency"</b>	means as defined in Schedule 1 to these Terms;
<b>"Temporary Worker"</b>	means the individual, firm, corporate body or officer, employee, worker or representative of an intermediary supplied to provide intermediary services Introduced by the Employment Business to provide services to the Hirer and carry out an Assignment (and save where otherwise indicated, includes "temporary", "agency" and "intermediary" construed accordingly within all correspondence and Terms);
<b>"Terms"</b>	means these terms of business (including the attached schedules) together with any applicable Labour Confirmation Correspondence, account opening forms and subsequent correspondence agreeing addendums;
<b>"Transfer Fee"</b>	means the fee payable in accordance with clause 8 of these Terms and Regulation 10 of the Conduct Regulations;
<b>"Vulnerable Person"</b>	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; and
<b>"WTR"</b>	means the Working Time Regulations 1998.
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.
1.4.	Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of these Terms) and all subordinate legislation made (before or after these Terms) under it from time to time.

## 2. THE CONTRACT

- 2.1. These Terms constitute the entire agreement between the Employment Business and the Hirer for the supply of the Temporary Worker's services by the Employment Business to the Hirer and are deemed to be accepted by the Hirer by virtue of its request for, interview with or Engagement of the Temporary Worker, or the passing of any information by the Hirer about a Temporary Worker to any third party following an Introduction.
- 2.2. These Terms include the supply of Temporary Worker services on a number of engagement models, depending on skills and nature of works, to include: PAYE workers engaged and paid by the Employment Business; workers who are employed and paid by their designated Payroll Company and/or; Limited Company or Construction Industry Scheme ("CIS") subcontractors.
- 2.3. Unless otherwise agreed in writing by a director of the Employment Business, and by an authorised representative of the Hirer, these Terms prevail over any terms of business or purchase conditions (or similar) put forward by the Hirer.
- 2.4. 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 Hirer and are set out in writing and a copy of the varied Terms is given to the Hirer stating the date on or after which such varied Terms shall apply.
- 2.5. The Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973) (as amended) when Introducing Temporary Workers for Assignments with the Hirer.
- 2.6. The Hirer acknowledges that the Temporary Worker carrying out the Assignment have not opted out of the Conduct Regulations and that all of the Conduct Regulations apply to these Terms.

## 3. HIRER OBLIGATIONS

### Obligations under the Conduct Regulations

- 3.1. To enable the Employment Business to comply with its obligations under the Conduct Regulations the Hirer undertakes to provide to the Employment Business details of the position which the Hirer seeks to fill, including the following:
  - 3.1.1. the type of work that the Temporary Worker 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 Hirer considers necessary or which are required by law or any professional body for the Temporary Worker to possess in order to work in the position; any risks to health or safety known to the Hirer and what steps the Hirer has taken to prevent or control such risks;
  - 3.1.4. the date the Hirer requires the Temporary Worker to commence the Assignment; and
  - 3.1.5. the duration or likely duration of the Assignment.
- 3.2. The Hirer undertakes that it knows of no reason why it would be detrimental to the interests of the Temporary Worker to fill the Assignment.

### Obligations regarding WTR

- 3.3. The Hirer will assist the Employment Business in complying with the Employment Business's duties under the WTR by supplying any relevant information about the Assignment requested by the Employment Business and the Hirer will not do anything to cause the Employment Business to be in breach of its obligations under these Regulations. If the Hirer requires the services of a Temporary Worker for more than 48 hours in any week during the course of an Assignment, the Hirer 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 Hirer requires the Temporary Worker to work in excess of 48 hours.

### Obligations regarding AWR

- 3.4. The Hirer will comply with its obligations under Regulations 12 (Rights of Agency Workers in relation to access to collective facilities and amenities) and 13 (Rights of agency works in relation to access to employment) of the AWR.
- 3.5. To enable the Employment Business to comply with its obligations under the AWR, the Hirer undertakes as soon as possible prior to the commencement of each Assignment and during each Assignment (as appropriate) and at any time at the Employment Business's request:
  - 3.5.1. to inform the Employment Business of any Calendar Weeks since 1 October 2011 in which the Temporary Worker has worked in the same or a similar role with the Hirer via any third party prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment which count or may count towards the Qualifying Period;
  - 3.5.2. if, in the 24 months immediately preceding the start of the Assignment and/or during the relevant Assignment, the relevant Temporary Worker has worked in the same or a similar role with the Hirer via any third party to provide the Employment Business with all the details of such work, including (without limitation) details of where, when and the period(s) during which such work was undertaken and any other details requested by the Employment Business;
  - 3.5.3. to inform the Employment Business if, in the 24 months immediately preceding the start of the relevant Assignment and/or during the relevant Assignment the Agency Worker has:
    - 3.5.3.1. completed two or more assignments with the Hirer;
    - 3.5.3.2. completed at least one assignment with the Hirer and one or more earlier assignments with any member of the Hirer's Group; and/or
    - 3.5.3.3. worked in more than two roles during an assignment with the Hirer and on at least two occasions worked in a role that was not the same role as the previous role.
  - 3.5.4. Save where the Temporary Worker will not complete the Qualifying Period during the term of the Assignment, to:
    - 3.5.4.1. provide the Employment Business with written details of the basic working and employment conditions the Temporary Worker would be entitled to for doing the same job if the Temporary Worker had been recruited directly by the Hirer as an employee or worker at the time the Qualifying Period commenced or with those of a Comparable Employee, such basic working and employment conditions being the Relevant Terms and Conditions;
    - 3.5.4.2. inform the Employment Business in writing whether the Relevant Terms and Conditions provided are those of a hypothetical directly recruited employee or worker or those of a Comparable Employee;
    - 3.5.4.3. if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide the Employment Business with a written explanation of the basis on which the Hirer considers that the relevant individual is a Comparable Employee;
    - 3.5.4.4. inform the Employment Business in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced; and

3.5.4.5. save where the Temporary Worker will not complete the Qualifying Period during the term of the Assignment, to provide the Employment Business with written details of its pay and benefits structures and appraisal processes and any variations of the same.

- 3.6. In addition, for the purpose of awarding any bonus to which the Temporary Worker may be entitled under the AWR, the Hirer will:
- 3.6.1. integrate the Temporary Worker into its relevant performance appraisal system;
  - 3.6.2. assess the Temporary Worker's performance;
  - 3.6.3. provide the Employment Business with copies of all documentation relating to any appraisal of the Temporary Worker, including without limitation written details of the outcome of any appraisal and the amount of any bonus awarded; and
  - 3.6.4. provide the Employment Business with all other assistance the Employment Business may request in connection with the assessment of the Temporary Worker's performance for the purpose of awarding any bonus.
  - 3.6.5. In relation to any Temporary Worker who has completed the Qualifying Period and who is pregnant, the Hirer agrees as follows:
    - 3.6.5.1. to notify the Employment Business immediately if the Temporary Worker informs the Hirer that she is pregnant;
    - 3.6.5.2. to carry out an appropriate risk assessment (at the Hirer's cost) to identify any possible risks to the Temporary Worker's health (or that of her unborn baby) and, if any such risks identified, to remove those risks (again, at the Hirer's cost); and
    - 3.6.5.3. that it shall not terminate the Assignment on the grounds of the Temporary Worker's pregnancy (save for circumstances set out below).

If, having carried out a risk assessment pursuant to sub-clause 3.6.5.2 above, it is not possible to remove any risks that have been identified, the Employment Business will remove the Temporary Worker from the Assignment and the Hirer shall fully indemnify the Employment Business in respect of any sums that may be payable to the Temporary Worker pursuant to the Agency Worker Regulations and/or the Employment Rights Act 1996 by virtue of the termination of such Assignment.

- 3.7. The Hirer will comply with all the Employment Business's requests for information and any other requirements to enable the Employment Business to comply with the AWR.
- 3.8. The Hirer warrants that:
- 3.8.1. all information and documentation supplied to the Employment Business in accordance with clauses 3.55, to 3.7 is complete, accurate and up-to-date; and
  - 3.8.2. it will, during the term of the relevant Assignment, immediately inform the Employment Business in writing of any subsequent change in any information or documentation provided in accordance with clauses 3.5, 3.6, and 3.7.
- 3.9. Without prejudice to clauses 14.1111 and 14.1212, the Hirer shall inform the Employment Business in writing of any:
- 3.9.1. oral or written complaint the Temporary Worker makes to the Hirer which is or may be a complaint connected with rights under the AWR; and
  - 3.9.2. written request for information relating to the Relevant Terms and Conditions that the Hirer receives from the Temporary Worker as soon as possible but no later than 7 calendar days from the day on which any such oral complaint is made to or written complaint or request is received by the Hirer and the Hirer will take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business, in order to resolve any such complaint or to provide any such information in a written statement to the Temporary Worker within 28 days of the Hirer's receipt of such a request in accordance with Regulation 16 of the AWR and the Hirer will provide the Employment Business with a copy of any such written statement.
- 3.10. The Hirer undertakes that it knows of no reason why it would be detrimental to the interests of the Temporary Worker or for the Temporary Worker to fill the Assignment.
- 3.11. The Hirer confirms that it is not a Public Authority. If the Hirer is a Public Authority the Employment Business may, if the circumstances require, terminate this Agreement and any Assignments issued under it in accordance with clause 11.32.

#### **4. INFORMATION TO BE PROVIDED BY THE EMPLOYMENT BUSINESS TO THE HIRER**

- 4.1. When Introducing a Temporary Worker to the Hirer the Employment Business shall inform the Hirer:
- 4.1.1. of the identity of the Temporary Worker including any intermediary;
  - 4.1.2. that the Temporary Worker 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. that the Temporary Worker is willing to work in the Assignment;
  - 4.1.4. details of any intermediary services to be provided; and
  - 4.1.5. of the Charges.
- 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 Worker is Introduced for an Assignment in the same position as one in which the Temporary Worker had previously been supplied within the previous 5 business days and such information has already been given to the Hirer, unless the Hirer 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 Hirer shall sign the Employment Business's timesheet authorising the number of hours worked by the Temporary Worker during that week.
- 5.2. Signature of the timesheet by the Hirer is confirmation of the number of hours worked by the Temporary Worker. If the Hirer is unable to sign a timesheet produced for authentication by the Temporary Worker because the Hirer disputes the hours claimed, the Hirer 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 Worker. Failure to sign the timesheet does not absolve the Hirer of its obligation to pay the Charges in respect of the hours worked.
- 5.3. Signature of the timesheet by or on behalf of the Hirer shall be deemed as acceptance that all hours on that timesheet have been worked to the Hirer's satisfaction and that full payment will be made in accordance with these Terms, at the agreed charge rates plus VAT.
- 5.4. The Hirer shall not be entitled to decline to sign a timesheet on the basis that it is dissatisfied with the work performed by the Temporary Worker. In the event that the Hirer is dissatisfied with the Temporary Worker the provisions of clause 10 and 11 below shall apply.

#### **6. CHARGES**

- 6.1. The Hirer agrees to pay the Charges as notified to and agreed with the Hirer. The Charges are calculated according to the number of hours worked by the Temporary Worker and comprise the following:
  - 6.1.1. the Temporary Worker's hourly rate of pay;
  - 6.1.2. an amount equal to any paid holiday leave to which the Temporary Worker is entitled in connection with the WTR and, where applicable, the AWR;
  - 6.1.3. any other amounts to which the Temporary Worker is entitled under the AWR, where applicable;
  - 6.1.4. employer's National Insurance contributions, if applicable;
  - 6.1.5. any travel, hotel or other expenses as may have been agreed with the Hirer or, if there is no such agreement, such expenses as are reasonable; and
  - 6.1.6. the Employment Business's commission, which is calculated as a percentage of the Temporary Worker's hourly rate.
- 6.2. The Employment Business reserves the right to vary the Charges agreed with the Hirer, by giving written notice to the Hirer:
  - 6.2.1. in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the AWR, ITEPA, the NICs legislation, the WTR or the Pensions Act 2008; and/or
  - 6.2.2. if there is any variation in the Relevant Terms and Conditions.
- 6.3. The Employment Business will invoice the Charges to the Hirer on a weekly basis. Unless otherwise agreed, in writing between a director of the Employment Business and the Hirer, the Hirer will pay the Charges within 14 days of the date of the invoice.  
If a permanent variation of terms is required then new Terms shall be agreed and signed by the Hirer to the Employment Business.  
The Hirer agrees that in the event of non payment of the invoice by the Hirer within 7 days the Hirer will indemnify and keep indemnified, on the indemnity basis, the Employment Business in respect of all costs, including legal costs and contractual interest (calculated pursuant to clause 6.7), incurred by the Hirer in respect of the recovery of the invoice whether they are incurred before or after judgment.
- 6.4. Weekend/Bank Holiday production is at the discretion of the Hirer and by mutual agreement of the Temporary Worker supplied by the Employment Business. A Bank Holiday will be charged at the agreed Sunday rate, if applicable.
- 6.5. In addition to the Charges, the Hirer will pay the Employment Business an amount equal to any bonus that the Hirer awards to the Temporary Worker in accordance with clause 3.6 immediately following any such award and the Employment Business will pay any such bonus to the Temporary Worker. For the avoidance of doubt, the Hirer will also pay any employer's National Insurance Contributions and the Employment Business's commission on the bonus (calculated using the same percentage rate as that used under clause 6.1.6) in addition to any bonus payable to the Temporary Worker.
- 6.6. If the Hirer fails to pay the Charges within the payment terms set out in clause 6.3 the Hirer agrees that the Employment Business reserves the right to charge interest at 4.25% per month from invoice date, or a period of 30 days thereafter until the date of payment; and
  - 6.6.1. until such times that the Hirer's account is brought back within the agreed terms or within its agreed credit limit the account may be placed on temporary stop; and/or
  - 6.6.2. if the Hirer's account is approaching the agreed credit limit, the Hirer shall be liable to pay an interim payment to the Employment Business calculated on estimated invoices up to the term of the due payment date.
- 6.7. No refunds are payable in respect of the Charges of the Employment Business.
- 6.8. Without prejudice to the above provisions, in the event that any Charges are not paid by the due date and therefore become overdue, all and any Charges incurred by the Hirer in respect of the Temporary Worker or otherwise become immediately due to the Employment Business as a debt.
- 6.9. The Hirer's obligations under this clause 6 shall be performed without any right of the Hirer to invoke set-off, deductions, withholdings or other similar rights.
- 6.10. VAT is payable at the applicable rate on the entirety of the Charges and all sums payable under clause 6.4 and 6.5.

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

The Employment Business assumes responsibility for the paying of the Temporary Worker and where appropriate, for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Temporary Worker pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003 and in accordance with the Social Security (Categorisation of Earners) Regulations 1978.

## **8. TRANSFER FEES**

- 8.1. The Hirer shall be liable to pay a Transfer Fee if the Hirer Engages a Temporary Worker Introduced by the Employment Business other than via the Employment Business or introduces the Temporary Worker to a third party and such introduction results in an Engagement of the Temporary Worker by the third party other than via the Employment Business and:
  - 8.1.1. where the Temporary Worker 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 Worker has not been supplied, such Engagement takes place within 6 months from the date of the Introduction to the Hirer.
- 8.2. The Transfer Fee will be calculated at 20% of the Remuneration payable or due to be payable to the Temporary Worker during the first 12 months of the Engagement. Remuneration shall not in any circumstances be calculated on a pro rata basis taking into account the period actually worked following an Engagement if such period is less than 12 months. In the event that an annual Remuneration cannot be determined or the actual amount of the remuneration is not known, the Transfer Fee will be calculated by multiplying the charges by 500.
- 8.3. Where prior to the commencement of the Hirer's Engagement other than via the Employment Business the Employment Business and the Hirer agree that such 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 pro-rata. Such reduction is subject to the Hirer Engaging the Temporary Worker for the agreed fixed term. Should the Hirer extend the Temporary Worker's Engagement or re-Engage the Temporary Worker within 12 months from the commencement of the initial Engagement the Employment Business reserves the right to recover the balance of the Transfer Fee.
- 8.4. No refund of the Transfer Fee will be paid in the event that the Engagement of the Temporary Worker other than via the Employment Business by the Hirer or by a third party to which the Hirer introduces the Temporary Worker terminates or terminates before the end of the fixed term referred to in clause 8.5.
- 8.5. VAT is payable at the applicable rate in addition to any Transfer Fee due.

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

- 9.1. Where:

- 9.1.1. the Temporary Worker is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment, the Employment Business will take all reasonably practicable steps to obtain and offer to provide to the Hirer copies of any relevant qualifications or authorisations of the Temporary Worker; and
- 9.1.2. in addition, where 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 Hirer of two references from persons who are not relatives of the Temporary Worker and who have agreed that the references they provide may be disclosed to the Hirer; and such other reasonably practicable steps as are required to confirm that the Temporary Worker 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 Hirer of the steps it has taken to obtain this information in any event.
- 9.2. The Hirer shall advise the Employment Business at the time of instructing the Employment Business to supply a Temporary Worker, whether during the course of the Assignment, the Temporary Worker will be required to work with, care for or attend one or more Vulnerable Persons or engage in regulated activity as defined in the Safeguarding Vulnerable Groups Act 2006.
- 9.3. The Hirer 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 Worker for the Assignment.
- 9.4. In particular in the event that the Hirer removes a Temporary Worker from an Assignment in circumstances which would require the Employment Business to provide information to the Disclosure and Barring Service (or the equivalent authority) under the Safeguarding Vulnerable Groups Act 2006 the Hirer will provide sufficient information to the Employment Business to allow it to discharge its statutory obligations.

## 10. UNSUITABILITY OF THE TEMPORARY WORKER

- 10.1. Taking the capabilities and skill-set (including those workers not of skilled status) of the Temporary Worker into account, the Hirer undertakes to supervise the Temporary Worker sufficiently to ensure the Hirer's satisfaction with the Temporary Worker's standards of work. If the Hirer reasonably considers that the services of the Temporary Worker are unsatisfactory, the Hirer may terminate the Assignment either by instructing the Temporary Worker to leave the Assignment immediately, or by directing the Employment Business to remove the Temporary Worker. The Employment Business may, in its absolute discretion, in such circumstances, reduce or cancel the Charges for the time worked by that Temporary Worker, provided that the Hirer has notified the Employment Business immediately that they have asked the Temporary Worker to leave the Assignment or the Assignment terminates:
  - 10.1.1. within 4 hours of the Temporary Worker commencing the Assignment; and provided that notification of the unsuitability of the Temporary Worker is confirmed in writing to the Employment Business within 24 hours of the termination of the Assignment.
- 10.2. The Employment Business shall notify the Hirer immediately if it receives or otherwise obtains information which gives the Employment Business reasonable grounds to believe that any Temporary Worker supplied to the Hirer is unsuitable for the Assignment and shall be entitled to terminate the Assignment forthwith without prior notice and without liability. Notwithstanding, the Hirer shall remain liable for all Charges incurred prior to the termination of the Assignment.
- 10.3. Temporary Workers Engaged on CIS or as a limited company contractor basis (acting as an intermediary), it is not the responsibility of the Employment Business for latent defects or liabilities but where the Hirer can identify workmanship issues prior to payment to this type of Engaged Temporary Worker, the Temporary Worker may be asked to rectify works or costs met if the Employment Business is notified within 24 hours of the work being installed and photographic and factual evidence is supplied. The Temporary Worker, if agrees, shall put right the works.
- 10.4. The Hirer shall notify the Employment Business immediately and without delay and in any event within one hour if the Temporary Worker fails to attend work or has notified the Hirer that they are unable to attend work for any reason.

## 11. TERMINATION OF THE ASSIGNMENT

- 11.1. Either party, including the Temporary Worker, may terminate the Assignment, in writing at any time without prior notice or liability (except in the case of termination by the Hirer, who shall be liable for any Charges due under clause 6).
- 11.2. Notwithstanding the provisions of clause 11 the Hirer may terminate the Assignment with immediate effect by notice in writing to the Employment Business where:
  - 11.2.1. the Temporary Worker has acted in breach of any statutory or other reasonable rules and regulations applicable to them while providing the intermediary services; or
  - 11.2.2. the Temporary Worker is in wilful or persistent breach of its obligations; or
  - 11.2.3. the Hirer reasonably believes that the Temporary Worker has not observed any condition of confidentiality applicable to the Temporary Worker from time to time; or
  - 11.2.4. the Hirer reasonably considers that the intermediary's provision of the intermediary services is unsatisfactory.
- 11.3. The Employment Business may terminate an Assignment with immediate effect by notice in writing if:
  - 11.3.1. the Hirer is in wilful or persistent breach of its obligations under this Agreement and where the breach is capable of being remedied, fails to remedy the breach within 7 days of receiving written notice from the Employment Business to do so; or
  - 11.3.2. the Hirer fails to pay any amount (including but not limited to due invoices) which is due to the Employment Business in full and on the date that the payment falls due; or
  - 11.3.3. the Hirer is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; or
  - 11.3.4. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Hirer; or
  - 11.3.5. an order is made for the winding up of the Hirer, or where the Hirer passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation or amalgamation where the resulting entity will assume all the obligations of the other party under this Agreement); or
  - 11.3.6. (where the Hirer is an individual) the Hirer dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order;
  - 11.3.7. the Hirer provides or seeks to provide, a fraudulent document which states that the Temporary Worker does not work under (or is not subject to the right of) supervision, direction or control of any person as to the manner in which s/he provides his/ her services; or

- 11.3.8. the Employment Business knows or suspects that (a) the Hirer is a Public Authority and (b) the Temporary Worker meets the conditions of liability set out in Sections 51 to 53 ITEPA; or
- 11.3.9. the Employment Business knows or suspects that the Hirer has breached the Data Protection Laws.

## 12. CONFIDENTIALITY AND DATA PROTECTION

- 12.1. All information relating to a Temporary Worker is confidential and subject to the Data Protection Laws and is provided solely for the purpose of providing Temporary Worker services to the Hirer. Such information must not be used for any other purpose nor divulged to any third party and the Hirer undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times.
- 12.2. The Hirer hereby acknowledges and confirms that it has read, understood and will adhere to the Data Protection Laws including but not limited to the provisions set out in Schedule 2 of these Terms. The Hirer shall communicate to the Employment Business upon receipt of, and prior to agreeing to, these Terms if it has any objections to Schedule 2. For the avoidance of any doubt, by agreeing to these terms the Hirer also agrees to Schedule 2 of these Terms.
- 12.3. The Employment Business undertakes to keep confidential all Relevant Terms and Conditions that the Hirer discloses to the Employment Business and not to use such information except for the purposes of compliance with the AWR (including, for the avoidance of doubt and without limitation, when dealing with any request for information or complaint made by any Temporary Worker or any AWR Claim).
- 12.4. Information relating to the Employment Business's 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 provision of the intermediary services by the Temporary Worker for the Hirer during the Assignment shall belong to the Hirer, save such rights as may be expressly owned or retained by the Temporary Worker. Accordingly the Employment Business shall use its reasonable endeavours to ensure that the Temporary Worker shall (and any relevant member of the Temporary Worker/intermediary shall) execute all such documents and do all such acts in order to give effect to the Hirer's rights pursuant to this clause.

## 14. LIABILITY

- 14.1. Whilst reasonable efforts are made by the Employment Business to give satisfaction to the Hirer by ensuring reasonable standards of skills, integrity and reliability from the Temporary Worker and to provide the same in accordance with the Assignment details, confirmed in the Labour Confirmation Correspondence, as provided by the Hirer no liability is accepted by the Employment Business for any Losses arising from the failure to provide a Temporary Worker for all or part of the period of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Temporary Worker or if the Temporary Worker 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 Workers supplied by the Employment Business pursuant to these Terms are engaged under contracts for services. They are not the employees of the Employment Business but are deemed to be under the supervision and direction of the Hirer from the time they report to take up duties and for the duration of the Assignment. The Hirer agrees to be responsible for all acts, errors or omissions of the Temporary Worker, whether wilful, negligent, fraudulent, reckless, dishonest or otherwise as though the Temporary Worker was on the payroll of the Hirer.
- 14.3. The Employment Business shall issue its Health and Safety Policy to all Temporary Workers supplied under these Terms and shall comply with all obligations, duties and regulations (whether statutory or otherwise) in any way arising from or directly or indirectly connected with the services rendered by the Temporary Worker.
- 14.4. The Employment Business shall effect and at all times maintain adequate public and employer's liability insurance with reputable insurers and to provide evidence of such insurance to the Hirer immediately on request.
- 14.5. The Hirer shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Temporary Worker and about any requirements imposed by law or by any professional body, which must be satisfied if the Temporary worker is to fill the Assignment. The Hirer will comply in all respects with all relevant statutes, by-laws, codes of practice and legal requirements including the provision of adequate public liability insurance in respect of an intermediary.
- 14.6. The Hirer 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 WTR, the Data Protection Laws, Health and Safety At Work Act 1974, the Management of Health and Safety at Work Regulations 1999 (as amended), by-laws, codes of practice and legal requirements to which the Hirer is ordinarily subject in respect of the Hirer'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 Worker during all Assignments.
- 14.7. The Hirer shall be responsible for ensuring the provision of health & safety on sites/work places that a Temporary Worker is located when on Assignment from the Employment Business. Where applicable, all sites are risk assessed prior to the Temporary Worker being Engaged, to check that the work to be delegated is within the capabilities of the Temporary Worker supplied by the Employment Business and that Temporary Workers that are not of skilled status are supervised at all times.
- 14.8. The Hirer undertakes not to request the supply of a Temporary Worker or intermediary 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 Hirer to perform the duties of a person on strike or taking official industrial action.
- 14.9. The Hirer shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business by reason of any proceedings, claims or demands by any third party (including specifically, but without limitation, HMRC and any successor, equivalent or related body pursuant to any of the provisions of ITEPA or the NICs legislation (and/or any supporting or consequential secondary legislation relating thereto)) arising out of any Assignment or arising out of any non-compliance with, and/or as a result of any breach of, this Agreement by the Hirer.
- 14.10. The Hirer shall indemnify and keep indemnified the Employment Business against any and all costs incurred in recovery including debt collection agent fees and reasonable legal costs and contractual interest (pursuant to clause 6.6) in relation to the recouping of Charges pursuant to clause 6.
- 14.11. The Hirer shall inform the Employment Business in writing of any AWR Claim which comes to the notice of the Hirer as soon possible but no later than 7 calendar days from the day on which any such AWR Claim comes to the notice of the Hirer.
- 14.12. If the Temporary Worker brings, or threatens to bring, any AWR Claim, the Hirer undertakes to take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business and at the Hirer's own cost, to avoid, dispute, resist, mitigate, compromise or defend any such AWR Claim and to appeal against any judgment given in respect thereof.
- 14.13. The Hirer shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business by reason of any proceedings, claims or demands by the intermediary, the Temporary Worker or any third party arising out of any non-compliance with, and/or as a result of, any breach of the Data Protection Laws by the Hirer.



**15. NOTICES**

All notices which are required to be given in accordance with these Terms 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, including 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. RIGHTS OF THIRD PARTIES**

None of the provisions of these Terms are intended to be for the benefit of or enforceable by third parties and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

**18. GOVERNING LAW AND JURISDICTION**

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

Please contact Diamond for labour requirements and to proceed to account opening, including Diamond’s signature on these Terms.

***Signed for and on behalf of the Employment Business.***

\_\_\_\_\_

Date:

\_\_\_\_\_

***Signed for and on behalf of the Hirer.***

\_\_\_\_\_

Name and job title:

\_\_\_\_\_

Date:

## **SCHEDULE 1: “COMPARABLE EMPLOYEE”, “QUALIFYING PERIOD” AND “TEMPORARY WORK AGENCY”**

“Comparable Employee” means as defined in Regulation 5(4) of the AWR being an employee of the Hirer who:

- (a) works for and under the supervision of the Hirer and is engaged in the same or broadly similar work as the Temporary Worker having regard, where relevant, to whether the employee and the Temporary Worker have a similar level of qualification and skill; and
- (b) works or is based at the same establishment as the Temporary Worker or, where there is no comparable employee working or based at that establishment who satisfies the requirements of (a) above, works or is based at a different establishment and satisfies those requirements.

For the purpose of the definition of “Qualifying Period” in clause 1.1 of these Terms, when calculating whether any weeks completed with the Hirer count as continuous towards the Qualifying Period, where:

- (a) the Temporary Worker has started working during an assignment and there is a break, either between assignments or during an assignment, when the Temporary Worker is not working;
- (b) the break is:
  - (i) for any reason and not more than six Calendar Weeks;
  - (ii) wholly due to the fact that the Temporary Worker is incapable of working in consequence of sickness or injury and the break is 28 Calendar Weeks or less; paragraph (iii) does not apply; and, if required to do so by the Employment Business, the Temporary Worker has provided such written medical evidence as may reasonably be required;
  - (iii) related to pregnancy, childbirth or maternity and is at a time in a protected period, being a period beginning at the start of the pregnancy and ending at the end of the 26 weeks beginning with childbirth (being the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy) or, if earlier, when the Temporary Worker returns to work;
  - (iv) wholly for the purpose of taking time off or leave, whether statutory or contractual, to which the Temporary Worker is otherwise entitled which is:
    - i. ordinary, compulsory or additional maternity leave;
    - ii. ordinary or additional adoption leave;
    - iii. ordinary or additional paternity leave;
    - iv. time off or other leave not listed in paragraphs (iv)i, ii, or iii above; or
    - v. for more than one of the reasons listed in paragraphs (iv)i, ii, iii to iv above;
  - (v) wholly due to the fact that the Temporary Worker is required to attend at any place in pursuance to being summoned for service as a juror and the break is 28 Calendar Weeks or less;
  - (vi) wholly due to a temporary cessation in the Hirer’s requirement for any worker to be present at the establishment and work in a particular role for a pre-determined period of time according to the established custom and practices of the Hirer;
  - (vii) wholly due to a strike, lock-out or other industrial action at the Hirer’s establishment; or
  - (viii) wholly due to more than one of the reasons listed in paragraphs (ii), (iii), (iv), (v), (vi) or (vii); and
- (c) the Temporary Worker returns to work in the same role with the Hirer,

any weeks during which the Temporary Worker worked for the Hirer before the break shall be carried forward and treated as counting towards the Qualifying Period with any weeks during which the Temporary Worker works for the Hirer after the break. In addition, when calculating the number of weeks during which the Temporary Worker has worked, where the Temporary Worker has started working in a role during an Assignment and is unable to continue working for a reason described in paragraph (b)(iii) or (b)(iv)i, ii, or iii., for the period that is covered by one or more such reasons, the Temporary Worker shall be deemed to be working in that role with the Hirer for the original intended duration or likely duration of the relevant Assignment, whichever is the longer. For the avoidance of doubt, time spent by the Temporary Worker working during an assignment before 1 October 2011 does not count for the purposes of the definition of “Qualifying Period”.

“Temporary Work Agency” means as defined in Regulation 4 of the AWR being a person engaged in the economic activity, public or private, whether or not operating for profit, and whether or not carrying on such activity in conjunction with others, of:

- (a) supplying individuals to work temporarily for and under the supervision and direction of hirers; or
- (b) paying for, or receiving or forwarding payment for, the services of individuals who are supplied to work temporarily for and under the supervision and direction of hirers.

Notwithstanding paragraph (b) of this definition a person is not a Temporary Work Agency if the person is engaged in the economic activity of paying for, or receiving or forwarding payments for, the services of individuals regardless of whether the individuals are supplied to work for hirers. For the purpose of this definition, a “hirer” means a person engaged in economic activity, public or private, whether or not operating for profit, to whom individuals are supplied, to work temporarily for and under the supervision and direction of that person.

**Schedule 2:**

Processing, Personal Data and Data Subjects

The subject matter and duration of the processing	The subject matter of and duration of the processing is as described in this Contract.
The nature and purpose of the Processing	<p>The nature of the processing is as described in this Contract and includes the following processing activities:</p> <ul style="list-style-type: none"> <li>• Hosting, storage and backup of Personal Data;</li> <li>• Accessing Personal Data in relation to providing work finding services;</li> <li>• Transferring Personal Data between the Temporary Worker and the Hirer or third parties in relation to this Contract such as payment companies, HMRC or a debt collection agent; and</li> <li>• Analysis, monitoring and reporting in relation to the services.</li> </ul> <p>The purpose of the hirer processing the Personal Data is to utilise the Temporary Workers under these Terms, the terms of the Contract.</p>
The type of Personal Data being Processed	<p>Personal data</p> <ul style="list-style-type: none"> <li>• Name</li> <li>• Date of birth</li> <li>• Contact details, including telephone numbers, email address and postal address (<i>inclusive of next of kin</i>)</li> <li>• National insurance number</li> <li>• Proof of address (<i>verify I.D and right to work in the UK</i>)</li> <li>• Education, experience, qualifications and copies of training certificates/ cards</li> <li>• CV/ work history</li> <li>• Job preferences including role, geographical areas and salary/wages</li> <li>• Any other information provided to be noted on files in relation to work-finding services</li> <li>• References of which have prior consent from the individual to pass their details across</li> <li>• A log of our communications by telephone, email and post</li> <li>• Grievances or recruitment decisions</li> </ul> <p>Sensitive personal data</p> <ul style="list-style-type: none"> <li>• Photo I.D (<i>verify I.D (prior to inductions) and right to work in the UK</i>)</li> <li>• Disability/health condition relevant to the role</li> <li>• Nationality</li> <li>• If relevant, permits and visas</li> <li>• Photo training cards</li> <li>• Criminal conviction</li> <li>• Outcome of security clearance for certain roles</li> <li>• Financial information (<i>including, but not limited to, payroll details and terms, HMRC data, pension scheme details, court orders and statutory payments</i>)</li> </ul>
The categories of Data Subjects	<p>The categories of data subjects are:</p> <ul style="list-style-type: none"> <li>• Website users;</li> <li>• Current, former and prospective employees and personnel;</li> <li>• Current, former and prospective clients, suppliers and contacts;</li> <li>• Current and former employees and personnel of clients, suppliers and contacts; and</li> <li>• Other data subjects of the Personal Data processed in connection with the provision of the services.</li> </ul>



20 September 2018