

# First Choice Recruitment Limited

## TERMS OF BUSINESS WITH A CLIENT FOR THE SUPPLY OF OPERATIVES

### 1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms the following definitions apply:

"AWR" means the Agency Workers Regulations 2010;

"Assignment" means the services performed by each individual Operative for the Client for the Hire Period, during which period the Operative is supplied by the Employment Business to work temporarily for and under the supervision and direction of the Client;

"Assignment Order Confirmation" means the written confirmation of the Assignment details, created by the Employment Business upon receiving instructions from the Client and based upon the information supplied verbally or in writing by the Client. Such confirmation shall include the commencement date, place and working times relating to the Assignment and the details set out in clause 3.1;

"AWR Claim" means any complaint or claim to a tribunal or court made by or on behalf of the Operative against the Client and/or the Employment Business for any breach of the AWR;

"Calendar Week" means any period of seven days starting with the same day as the first day of the First Assignment;

"Charges" means the charges of the Employment Business calculated in accordance with clause 5.3 and as may be varied from time to time in accordance with these Terms;

"Client" means the person, firm or corporate body (together with, where the context requires, any subsidiary (as defined in section 1159 of the Companies Act 2006) or other associate (as defined in section 1152 of the Companies Act 2006)) to which the Operative is Introduced;

"Comparable Employee" has the meaning set out in regulation 5(4) of the AWR;

"Conduct Regulations" means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;

"Employment Business" First Choice Recruitment Limited registered company no. 03789401;

"Engagement" means the engagement, employment or use of an Operative by the Client or any Group Company or any third party to whom the Operative has been Introduced by the Client, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, or under an agency, license,

franchise or partnership arrangement, or any other engagement and/or through a body corporate of which the Operative is an officer, employee member or other representative and "Engage", "Engages" and "Engaged" shall be construed accordingly;

"First Assignment" means:

- the relevant Assignment; or
- if, prior to the relevant Assignment:
- the Operative has worked in any assignment in the same role with the relevant Client as the role in which the Operative works in the relevant Assignment; and
- 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 Operative 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);

"Group Company" means:

- any individual, company, partnership, statutory body or other entity which from time to time controls the Client, including (but not limited to) as a holding company as defined in section 1159 of the Companies Act 2006; and
- any company, partnership, statutory body or other entity which from time to time is controlled by or is under common control with the Client, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006,

for the purpose of this definition, control means the legal or beneficial ownership, whether directly or indirectly, of more than 50% of the issued share capital or a similar right of ownership or the power to direct or cause the direction of the affairs and/or general management of the entity;

"Hire Period" means the period of time agreed between the Employment Business and the Client in respect of each Operative requested by the Client;

"Introduction" means:

- the Client's interview of an Operative (in person or by telephone or by any other means) following the Client's instruction to the Employment Business to supply an Operative; or
- the passing by the Employment Business to the Client of a curriculum vitae or other information which identifies the Operative, or
- the supply of the Operative and "Introduced" and "Introducing" shall be construed accordingly;

"Operative" means a person or group of persons Introduced by the Employment Business to the Client including, without limiting the generality of the foregoing, any officer, employee or partner of the Operative (if the Operative is a body corporate or firm) and members of the Employment Business' own staff;

"Period of Extended Hire" means any additional period that the Client wishes the Operative to be supplied for beyond the duration of the original Assignment or series of Assignments as an alternative to paying a Transfer Fee;

"Qualifying Operative" means any Operative who at the relevant time is entitled to the rights conferred by regulation 5 of the AWR;

"Qualifying Period" means the 12 week qualifying period as defined in regulation 7 of the AWR, subject to regulations 8 and 9 of the AWR;

"Relevant Period" shall have the meaning set out in regulations 10(5) and (6) of the Conduct Regulations;

"Relevant Terms and Conditions" means the relevant terms and conditions, for a particular Qualifying Operative as defined in regulation 6 of the AWR;

"Remuneration" includes gross base salary or fees, guaranteed and/or anticipated bonus and commission, earnings, profit share, profit related pay, pension, 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 Operative for services provided to or on behalf of the Client or any third party. Where a company car is provided the value of such benefit shall be deemed to be £5,000 pa for the purposes of this definition;

"Temporary Work Agency" has the meaning set out in regulation 4 of the AWR;

"Terms" means these terms of business (including the attached schedules) together with any applicable Assignment Order Confirmation;

"Transfer Fee" means the fee payable in accordance with clause 7 of these Terms and regulation 10 of the Conduct Regulations; and

"Working Time Regulations" 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 this agreement) and all subordinate legislation made (before or after this agreement) under it from time to time.

1.5. A person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).

1.6. Any words following the terms including, includes, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

### 2. THE CONTRACT

2.1. These Terms constitute the contract between the Employment Business and the Client for the supply of Operatives' services by the Employment Business to the Client and are deemed to be accepted by the Client by virtue of its request for, interview with or Engagement of an Operative, or the passing of any information by the Client about an Operative to any third party following an Introduction.

2.2. These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by the Managing Director of the Employment Business, these Terms prevail over any terms of business or purchase conditions (or similar) put forward by the Client.

2.3. Subject to clauses 5.2 and 5.4, no variation or alteration to these Terms shall be valid unless the details of such variation are agreed between Client and the Managing Director of the Employment Business and are set out in writing and a copy of the varied Terms is given to the Client stating the date on or after which such varied Terms shall apply.

2.4. The Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973 (as amended)) when Introducing Operatives for Assignments with the Client.

### 3. CLIENT'S OBLIGATIONS

3.1. The Client shall, prior to the commencement of any Assignment, provide to the Employment Business, details of the position which the Client seeks to fill and the Assignment including the following:

- confirmation of the Client's identity and the nature of the Client's business;
- the date on which the Client requires an Operative to commence an Assignment and the duration, or anticipated duration, of any such Assignment;
- any expenses payable by or to the Operative;
- the type of work that the Operative would be required to do;
- the location and hours of work;
- the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Operative to possess in order to work in the position;
- any requirements of law or any professional body relevant to the Operative when carrying out the Assignment; and
- any health and safety risks known to the Client and the steps taken by the Client to mitigate those risks.

3.2. The Client shall assist the Employment Business in complying with the Employment Business' duties under the Working Time Regulations and shall promptly supply any relevant information about the Assignment requested by the Employment Business. The Client shall not do anything to cause the Employment Business to be in breach of its obligations under the Working Time Regulations. If the Client requires the services of an Operative for more than 48 hours in any week during the course of an Assignment, the Client must notify the Employment Business of this requirement before the

commencement of the Assignment or at the very latest, where this is not reasonably practicable, before the commencement of the week in which the Client requires the Operative to work in excess of 48 hours.

3.3. The Client shall comply with its obligations under Regulation 12 (Rights of agency workers in relation to access to collective facilities and amenities) and 13 (Rights of agency workers in relation to access to employment) of the AWR.

3.4. The Client undertakes, as soon as possible prior to the commencement of each Assignment and during each Assignment (as appropriate) and at any time on the Employment Business' request, to inform the Employment Business if, since 1 October 2011:

3.4.1. the relevant Operative has worked in the same or a similar role with the Client via the Employment Business or 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;

3.4.2. the Operative has worked in the same or a similar role with the Client via the Employment Business or any third party prior to the date of commencement of the relevant Assignment and/or works in the same or a similar role with the Client via the Employment Business or any third party during the relevant Assignment;

3.4.3. the Operative has, prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment:

3.4.4. completed two or more assignments with the Client;

3.4.5. worked in more than two roles during an assignment with the Client and on at least two occasions worked in a role that was not the same role as the previous role;

and if so, the Client shall provide the Employment Business with full details thereof.

3.5. If the Employment Business requests it, the Client shall:

3.5.1. provide the Employment Business with written details of the basic working and employment conditions the Operative would be entitled to for doing the same job if the Operative had been recruited directly by the Client as an employee or worker at the time the Qualifying Period commenced or with those of a Comparable Employee;

3.5.2. 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;

3.5.3. 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 Client considers that the relevant individual is a Comparable Employee;

3.5.4. 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

3.5.5. save where the Operative 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 Operative may be entitled under the AWR, the Client shall:

3.6.1. integrate the Operative into its relevant performance appraisal system;

3.6.2. assess the Operative's performance;

3.6.3. provide the Employment Business with copies of all documentation relating to any appraisal of the Operative, 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 Operative's performance for the purpose of awarding any bonus.

3.7. The Client shall comply with all the Employment Business' requests for information and any other requirements to enable the Employment Business to comply with the AWR.

3.8. The Client warrants that all information and documentation supplied to the Employment Business in accordance with clauses 3.4, 3.5, 3.6 and 3.7 is complete, accurate and up-to-date and it will, during the term of the relevant Assignment, immediately inform the Employment Business in writing of any subsequent change in any such information or documentation.

3.9. The Client shall ensure that:

3.9.1. any sites upon which the Operative is required to carry on the Assignment together with any plant equipment or vehicles which the Operative is required to operate or use by the Client are safe and (where applicable) are at all times adequately maintained;

3.9.2. no work performed by the Employment Business contravenes any statutory or other regulations, order or by-laws affecting the work or the relevant premises or any plant or equipment or vehicles which the Operatives are required to operate or use;

3.9.3. it effects and maintains adequate insurance cover with reputable insurers at the Client's own expense for any liability it may incur under clause 3 of these Terms; and

3.9.4. any of its policies of insurance capable of affecting the Employment Business shall incorporate provisions expressly excluding any rights of subrogation against the Employment Business' officers, employees, sub-contractors or agents.

3.10. The Client shall inform the Employment Business in writing, as soon as possible but no later than 7 calendar days from the day of receipt by the Client, of any:

3.10.1. oral or written complaint the Operative makes to the Client which is or may be a complaint connected with rights under the AWR;

3.10.2. written request for information relating to the Relevant Terms and Conditions that the Client receives from the Operative, and the Client shall 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 Operative within 28 days of the Client's receipt of such a request in accordance with regulation 16 of the AWR. The Client will provide the Employment Business with a copy of any such written statement.

3.11. The Client undertakes that it knows of no reason why it would be detrimental to the interests of the Operative for the Operative to perform the Assignment.

3.12. During any Assignment the Client shall be responsible for:

3.12.1. the supervision, organisation and responsibility for the work done by the Operative whilst the Operative is working for the Client; and

3.12.2. any acts (willful or otherwise), omissions, losses, or damages caused by the Operative whilst they are working for the Client.

### 4. TIMESHEETS

4.1. The Employment Business' weekly accounting period runs from Monday to Sunday (inclusive).

4.2. The Employment Business' invoices to the Client and payments to its Operatives are prepared from the Operatives' time-sheets on which are recorded the exact hours worked for each and every Operative in connection with an Assignment.

4.3. At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of one week or less) the Client or its authorised representative shall inspect and sign the Employment Business' timesheet verifying the number of hours worked by the Operative during the week.

4.4. In respect of clause 4.3 above the Client or its authorised representative shall enter the start and end times worked or total amount of hours worked by the Operative and sign each time sheet.

4.5. Signature of the timesheet by the Client is confirmation of the number of hours worked and that the work is to the Client's satisfaction. If the Client is unable to sign a timesheet produced for authentication by the Operative because the Client disputes the hours claimed, the Client shall inform the Employment Business as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what hours, if any, were worked by the Operative. Failure to sign the time sheet does not absolve the Client of its obligation to pay the Charges in respect of the hours worked. The Employment Business may make unverified payment to the Operatives and invoice the Client accordingly.

4.6. The Client shall not be entitled to decline to sign a timesheet on the basis that it is dissatisfied with the work performed by the Operative. In the event that the Client is dissatisfied with the Operative the provisions of clause 8.5 and 8.6 below shall apply.

### 5. CHARGES

5.1. The Employment Business shall provide the Client with a schedule of rates detailing the charge per hour for each and every Operative and the same shall be specified in the Assignment Order Confirmation. However, in the absence of any written agreement to the contrary, Operatives will be charged on the basis of a minimum of eight hours multiplied by the agreed hourly rate.

5.2. The Employment Business may vary the hourly rate in respect of Operatives, which shall be effective upon an amended copy of the revised agreement being sent either by fax, e-mail or recorded delivery to the Client.

5.3. The Client agrees to pay the Charges as notified to and agreed with the Client. The Charges are calculated according to the number of hours worked by the Operative (to the nearest quarter hour) and comprise the Operative's hourly rate of pay which is inclusive of the following:

5.3.1. the Operative's standard hourly rate;

5.3.2. an amount equal to any paid holiday leave to which the Operative is entitled under the Working Time Regulations and, where applicable, the AWR and which is accrued during the course of an Assignment;

5.3.3. any other amounts to which the Operative is entitled under the AWR, where applicable;

5.3.4. employer's National Insurance contributions; and

5.3.5. the Employment Business' commission, which is calculated as a percentage of the Operative's hourly rate.

5.4. The Employment Business reserves the right to vary the Charges agreed with the Client, by giving written notice to the Client:

5.4.1. in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the AWR; and/or

5.4.2. if there is any variation in the Relevant Terms and Conditions.

- 5.5. Any travel, hotel or other expenses as may have been agreed with the Client are not included within the Charges and shall be paid by the Client upon the Employment Business's demand together with any reasonable processing fee the Employment Business may levy.
- 5.6. The Employment Business shall render an invoice to the Client at the end of each working week throughout the Assignment period, for each and every Operative stating the hourly charge, the period to which the Charges relate and the total sum (inclusive of VAT) which is then due and owing. VAT is payable by the Client at the applicable rate on the entirety of the Charges.
- 5.7. The Client shall pay the invoice(s) within thirty days of receipt and for this purpose time shall be of the essence. Invoices shall be deemed to be received two days after the day of posting by the Employment Business. The Employment Business shall not accept any queries, disputes or claims by the Client unless made in writing within 10 days of the invoice date.
- 5.8. The Client shall not be entitled to withhold payment by reason of any claim, counter claim, or right of set-off which the Client may have nor claim any discount, compensation for levy, or alteration in the price not previously agreed in writing by the Employment Business.
- 5.9. If any Charges due by the Client to the Employment Business under these Terms (in whole or part) remains outstanding for a period of seven days after the due date the Employment Business shall have the absolute right at any time thereafter to withdraw the Operatives forthwith whereupon this agreement shall terminate absolutely. However, the obligations of the Client under these Terms shall remain in respect of any breach under the terms of these Terms.
- 5.10. The Employment Business reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at a rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.
- 5.11. No refunds or rebates are payable in respect of the Charges.

## 6. PAYMENT OF THE OPERATIVES

The parties acknowledge that the Client shall not be responsible for paying the Operatives or for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Operatives pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003.

## 7. TRANSFER FEES

7.1. The Client shall be liable to pay a Transfer Fee if the Client or any Group Company Engages an Operative Introduced by the Employment Business other than via the Employment Business or introduces the Operative to a third party and such introduction results in an Engagement of the Operative by the third party other than via the Employment Business and:

- 7.2. where the Operative has been supplied by the Employment Business, such Engagement takes place during the Assignment or within the Relevant Period;
- 7.3. where the Operative has not been supplied, such Engagement takes place within six months from the date of the Introduction to the Client.
- 7.4. The Transfer Fee will be calculated in accordance with Schedule 1.

7.5. If the Client wishes to Engage the Operative other than via the Employment Business without liability to pay a Transfer Fee, the Client may, on giving one week's written notice to the Employment Business, Engage the Operative for the Period of Extended Hire specified in Schedule 1.

7.6. During such Period of Extended Hire the Employment Business shall supply the Operative on the same terms on which the Operative has or would have been supplied during the Assignment and in any case on terms no less favourable than those terms which applied immediately before the Employment Business received the notice in clause 7.3 and the Client shall continue to pay the Charges set out in clause 5. If the Employment Business is unable to supply the Operative for any reason outside its control for the whole or any part of the Period of Extended Hire, or the Client does not wish to hire the Operative on the same terms as the Assignment, but the Operative is Engaged by the Client, then the Client shall pay the Transfer Fee, reduced pro-rata to reflect any Charges paid by the Client during any part of the Period of Extended Hire worked by the Operative before being Engaged by the Client. If the Client fails to give notice of its intention to Engage the Operative other than via the Employment Business before such Engagement commences, the parties agree that the Transfer Fee shall be due in full.

7.7. Where, prior to the commencement of the Client's Engagement of the Operative other than via the Employment Business the Employment Business, and the Client 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 as calculated in accordance with Schedule 1 pro-rata. Such reduction is subject to the Client Engaging the Operative for the agreed fixed term only. Should the Client extend the Operative's Engagement or re-Engage the Operative within 12 months from the commencement of the initial Engagement the Employment Business reserves the right to recover the balance of the Transfer Fee.

7.8. No refund of the Transfer Fee will be paid in the event that the Engagement of the Operative other than via the Employment Business by the Client or by a third party to which the Client introduces the Operative terminates or terminates before the end of the fixed term referred to in clause 7.4.

7.9. VAT is payable by the Client in addition to any Transfer Fee due.

## 8. SUITABILITY OF THE OPERATIVE AND INFORMATION TO BE PROVIDED IN SPECIAL SITUATIONS

- 8.1. The Employment Business shall use its reasonable endeavours to supply Operatives for Assignments as from time to time specified by the Client.
- 8.2. Where the Operative 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 Client copies of any relevant qualifications or authorisations of the Operative. If the Employment Business has taken all reasonably practicable steps to obtain the information and has been unable to do so fully it shall inform the Client of the steps it has taken to obtain this information in any event.
- 8.3. After receipt of the Assignment Order Confirmation it is the sole responsibility of the Client (by any reasonable checks it deems necessary or appropriate) to satisfy itself as to the qualifications, certificates, suitability and competency of the Operatives Introduced by the Employment Business.
- 8.4. Without prejudice to any provisions contained within these Terms the Employment Business shall not be liable for an express or implied warranty or term in respect of any Operatives with regard to their qualifications, certificates, suitability and competency however so communicated to the Client.
- 8.5. In the event that the Operative Introduced and supplied to the Client shall prove unsuitable, incapable or incompetent, the Client shall notify the Employment Business of the same within four hours of the Operative commencing the Assignment and the Operative must be dispatched from the place of business. Provided that the Client shall confirm such unsuitability, incapability or incompetence in writing within 7 days of the beginning of the Assignment, no Charges shall be rendered by the Employment Business to the Client in respect of the first four hours worked by the Operative. In the absence of such written notifications, the Employment Business shall render an invoice for the Assignment whether such Operative has continued to be utilised by the Client in their original position or not.
- 8.6. The Client shall notify the Employment Business immediately and without delay and in any event within one hour if the Operative fails to attend an Assignment or has notified the Client that they are unable to attend an Assignment for any reason.

## 9. DRIVING/OPERATION OF MOTOR VEHICLE/MACHINERY

- 9.1. Where any Operative is required by the Client to drive any motor vehicle (whether such vehicle is subject to the Road Traffic Acts in force from time to time) or any other machinery the Client undertakes to:
- 9.2. ensure that any such motor vehicle or machinery is safe and fit for purpose and is comprehensively insured; and
- 9.3. fully satisfy itself that the relevant Operative has a suitable current licence for driving any such motor vehicle or machinery and the Operative has the appropriate experience and qualifications for driving or operating the same.

## 10. TERMINATION OF THE ASSIGNMENT/AGREEMENT

- 10.1. The Client or Employment Business may terminate an Assignment at any time by either party giving to the other a minimum of two days written notice.
- 10.2. The Employment Business may terminate this agreement immediately (without liability to the Client) by giving notice to the Client if:
- 10.3. the Client fails to pay any amount due under this agreement on the due date and the Client remains in default not less than seven days after being notified in writing to make such payment;
- 10.4. the Client suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or it admits inability to pay its debts or (being a company) it is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 10.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the Client's winding up; or
- 10.6. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Client.
- 10.7. Notwithstanding termination of this agreement by either party the provisions of clauses 11 and 12 shall survive termination and shall continue in full force for a period of five years from the date of termination.

## 11. CONFIDENTIALITY AND DATA PROTECTION

- 11.1. All information relating to an Operative is confidential and subject to the Data Protection Laws and is provided solely for the purpose of providing work-finding services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times.
- 11.2. The Employment Business undertakes to keep confidential all Relevant Terms and Conditions that the Client 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 Operative or any AWR Claim).
- 11.3. Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.4.
- 11.4. Each party may disclose the other party's confidential information:
- 11.5. to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
- 11.6. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.7. No party shall use any other party's confidential information for any purpose other than to perform its obligations under this agreement

## 12. LIABILITY

- 12.1. Whilst reasonable efforts are made by the Employment Business to give satisfaction to the Client by ensuring reasonable standards of skill, integrity and reliability from the Operative and to provide the same in accordance with the Assignment details as provided by the Client, no liability is accepted by the Employment Business for any loss, expense, damage or delay arising from any failure to provide any Operative for all or part of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Operative or if the Operative terminates the Assignment for any reason.
- 12.2. Nothing in these Terms shall exclude or limit a party's liability for death or personal injury arising from that party's own negligence or for any other loss which it is not permitted to exclude under law.
- 12.3. Operatives 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 Client from the time they report to take up duties and for the duration of the Assignment. The Client agrees to be responsible for all acts, errors or omissions of the Operative, whether willful, negligent or otherwise as though the Operative was on the payroll of the Client.
- 12.4. The Client shall comply in all respects with all statutory provisions as are in force from time to time including, for the avoidance of doubt, but not limited to the Working Time Regulations, Health and Safety At Work etc. Act 1974, the Management of Health and Safety at Work Regulations (as amended), by-laws, codes of practice and legal requirements to which the Client is ordinarily subject in respect of the Client's own staff (excluding the matters specifically mentioned in clause 6 above), including in particular the provision of adequate employer's and public liability insurance cover for the Operative during all Assignments.
- 12.5. The Client undertakes not to request the supply of an Operative to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by a worker who has been transferred by the Client to perform the duties of a person on strike or taking official industrial action.
- 12.6. The Client hereby agrees and undertakes to indemnify and keep indemnified the Employment Business against any costs, claims, losses, damages or expenses 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) incurred or suffered by the Employment Business or brought or claimed against the Employment Business arising out of or in connection with:

- 12.7. any breach of the Client's obligations set out in these Terms;
- 12.8. any act or omission of any Operative;
- 12.9. death or injury suffered by an Operative or any other third party; and
- 12.10. any breach of any statutory requirements in respect of the health and safety of each and every Operative in relation to the work, the premises, any plant, equipment or vehicles (including all internal site safety and protective clothing requirements and any amendments or recommendations thereto). The Client shall keep a record of all incidents causing personal injury or death and the Employment Business shall have the right of inspect of such records which may relate to any Operate supplied to the Client.
- 12.11. The Employment Business shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
- 12.12. any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
- 12.13. any loss or corruption (whether direct or indirect) of data or information;
- 12.14. any loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time);
- 12.15. any loss or liability (whether direct or indirect) under or in relation to any other contract; or
- 12.16. any special, indirect, consequential loss, costs, damages, charges and expenses.
- 12.17. The Employment Business' total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with this agreement and any Assignment shall be limited to the lesser of (a) £10,000 and (b) the total Charges received by the Employment Business from the Client pursuant to this agreement during the 12-month period immediately before the date on which the cause of action first arose or, if the cause of action arose during any period before 12 months had elapsed from the date upon which this agreement became binding upon the parties, during that shorter period.

## 13. NO PARTNERSHIP OR AGENCY

- 13.1. Nothing in these Terms is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 13.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## 14. THIRD PARTY RIGHTS

No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

## 15. NOTICES

- 15.1. Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by fax to its main fax number.
- 15.2. Any notice or communication shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; if sent by fax, at 9.00 am on the next Business Day after transmission.
- 15.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

## 16. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

## 17. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

## 18. FORCE MAJEURE

Neither party shall be in breach of these Terms nor liable for delay in performing, or failure to perform, any of its obligations under these Terms, including payment, if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 12 weeks, the party not affected may terminate this agreement by giving seven days' written notice to the affected party.

## 19. SEVERANCE

19.1. If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Terms.

19.2. If one party gives notice to the other of the possibility that any provision or part-provision of these Terms is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## 20. 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.

## SCHEDULE 1: TRANSFER FEES

- (a) The Transfer Fee referred to in clause 7 shall be calculated as follows: The hourly rate paid by the Client to the Employment Business in respect of relevant Operative multiplied by 500 plus any applicable VAT.
- (b) The Period of Extended Hire, referred to in clause 7, before the Client Engages an Operative shall be: 13 weeks

## I AM AUTHORISED BY THE COMPANY/BUSINESS AND ACCEPT FIRST CHOICE RECRUITMENT LIMITED'S TERMS AND CONDITIONS

COMPANY NAME .....

PRINT NAME ..... POSITION .....

SIGNED ..... DATE .....