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Ross Recruitment: Terms and Conditions of Business for the Introduction of Temporary and Contract Staff (Operating as an Employment Business)

DEFINITIONS

1.1 In these terms of business the following definitions apply:

"Assignment" means the supply by Ross of a Temporary Worker to render services to the Client for such period as is agreed between Ross and the Client;

"Client" means the person, firm, company or entity, together with any subsidiary or associated company as defined by the Companies Act 1985, to whom a Temporary Worker is supplied or introduced by Ross;

"Introduction" means the Client's interview of a Temporary Worker in person or by telephone following the Client's instruction to Ross to search for or supply a Temporary Worker; and/or the presentation of a Temporary Worker by Ross to the Client, including but not limited to passing to the Client a curriculum vitae or other information which identifies or enables identification of a Temporary Worker;

"Relevant Period" means the period of 14 weeks from the start of the first Assignment of a Temporary Worker (and each new Assignment where there has been a break of more than 42 days since the end of the previous Assignment shall also be considered to be the "first Assignment" for these purposes) or the period of 8 weeks from the day after the last day on which a Temporary Worker worked on an Assignment, whichever period ends the later

"Remuneration" means the relevant Temporary Worker's total remuneration in respect of the first year of their employment or engagement by the Client (if applicable), including all salary, emoluments and benefits which form part of the Temporary Worker's gross taxable pay before applying any deductions, exemptions or allowances and the sum of £5,000 where a car or car allowance is provided to the Temporary Worker;

"Ross" means Ross Recruitment Associates Limited of Lynton House, 1 Lynton Drive, Bebington, Wirral, CH63 3EH;

"Supply" means the supply of a Temporary Worker or Temporary Workers to the Client by Ross on an Assignment and "supplied" shall be construed accordingly where the context so allows;

"Temporary Worker" means any individual in respect of whom Ross effects an Introduction to the Client or whose services are supplied by Ross to the Client;

"Vulnerable Persons" means anyone who is under the age of 18, the elderly or infirm or anyone in need of care and attention;

"2003 Regulations" means The Conduct of Employment Agencies and Employment Businesses Regulations 2003.

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 These terms of business are governed by the laws of England and Wales and are subject to the exclusive jurisdiction of the courts of England and Wales.

2. SCOPE OF THIS AGREEMENT

2.1 These terms of business (together with any subsequent amendments agreed between Ross and the Client and recorded in writing) constitute the entire agreement between Ross and the Client for the supply of Temporary Workers' services by Ross to the Client and shall be deemed to be accepted by the Client upon either an Introduction; a Supply; the engagement of a Temporary Worker by the Client under a contract of service, a contract for services or otherwise; or the passing by the Client of any information about a Temporary Worker to any third party following an Introduction.

2.2 Unless otherwise agreed this agreement shall apply to all future Introductions and Assignments.

2.3 No variation or alteration to this agreement shall be valid unless agreed by a Director of Ross and the Client and confirmed to the Client in writing.

2.4 Unless otherwise agreed in writing by Ross, the terms of this agreement prevail over any terms of business or purchase conditions proffered by the Client.

2.5 Ross is entitled to assume that any employee or agent of the Client has authority to bind the Client and Ross is not required to seek confirmation of that authority.



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3. INFORMATION TO BE PROVIDED BY THE CLIENT IN CONNECTION WITH EACH ASSIGNMENT

3.1 Before any Introduction is made or the services of any Temporary Worker are provided to the Client under the terms of this agreement, the Client shall provide sufficient information about the Assignment and the nature of the work required to enable Ross to select appropriate workers, as follows:

3.1.1 the identity of the Client and the nature of the Client's business;

3.1.2 the start date for the Assignment and its duration or likely duration;

3.1.3 the type of work the Temporary Worker will be required to do, the location and hours of work involved and any risks to health and safety known to the Client in relation to the Assignment and the steps the Client has taken to prevent or control such risks;

3.1.4 the experience, training, qualifications or any authorisation which the Client considers necessary, or which the Temporary Worker is required either by law or by a professional body to hold in order to undertake the Assignment;

3.1.5 details of the Client's requirements concerning conduct and standards of Temporary Workers;

3.1.6 whether the Temporary Worker will be required to work with or care for a Vulnerable Person;

3.1.7 any expenses payable by or to the Temporary Worker.

4. STEPS TO BE TAKEN BY ROSS IN CONNECTION WITH EACH TEMPORARY WORKER

4.1 In relation to each Temporary Worker provided for an Assignment Ross will provide to the Client:

4.1.1 confirmation of the identity of the Temporary Worker;

4.1.2 confirmation that the Temporary Worker has the experience, training, qualifications and any authorisation that the Client has confirmed it considers necessary or which the Temporary Worker is required by law or any professional body to hold to carry out the Assignment and which have been notified to Ross under clause 3 above;

4.1.3 confirmation the Temporary Worker will be engaged by Ross under a contract for services;

4.1.4 confirmation the Temporary Worker is willing to provide his/her services under the Assignment to the Client; and

4.1.5 confirmation that Ross is not aware of any fact which would make it detrimental to the interests of either the Temporary Worker or the Client for the Assignment to proceed.

4.2 If the Temporary Worker is required by law or any professional body to have any qualifications or authorisations to work on the Assignment and/or is to work with or care for any Vulnerable Person, Ross will take reasonable steps to:

4.2.1 obtain copies of any relevant qualifications and/or authorisations for the Assignment;

4.2.2 obtain references from two people not connected to the Temporary Worker and who have consented to their references being disclosed to the Client; and

4.2.3 determine that the Temporary Worker is not unsuitable to work with Vulnerable Persons.

4.3 If Ross has been unable to complete the checks in clause 4.2 before a Temporary Worker's details are submitted, or an Assignment commences, Ross shall notify the Client of the steps taken and keep the Client informed of progress.

4.4 If before or after an Assignment begins Ross receives or obtains information which gives it reasonable grounds to believe that a Temporary Worker is or may be unsuitable for an Assignment that information shall be provided to the Client and if appropriate the Assignment will be terminated immediately by Ross removing the Temporary Worker from the Assignment. In such circumstances Ross will have no liability but will seek, so far as is reasonably possible, to provide a suitable alternative Temporary Worker to the Client.

5. CHARGES

5.1 During the Assignment, the Client agrees to pay the hourly charges of Ross as notified to the Client at the commencement of the Assignment and as may be varied from time to time during the Assignment. The charges are calculated according to the number of hours worked by the Temporary Worker (to the nearest quarter hour) and vary according to the grade and/or category of Temporary Worker supplied. The charges are comprised mainly of the Temporary Worker's remuneration (including holiday pay) but also include Ross's margin and employer's national



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insurance contributions. In addition, Ross shall be entitled to charge the Client in respect of any travel, hotel or other incidental expenses necessarily incurred by Ross in the provision of the Introduction or Supply services under this agreement (excluding advertising costs) or incurred by the Temporary Worker where those expenses are recoverable from the Client by Ross. Expenses will wherever possible be agreed with the Client but if there is no such agreement the Client shall pay such expenses as are reasonable.

5.2 The charges are payable by the Client direct to Ross within 7 days of the date of the invoice. Ross reserves the right to charge interest on any overdue amounts at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.

5.3 The Client will indemnify Ross in full for and against all costs, charges and expenses incurred by Ross in recovering any outstanding charges. In addition to interest and any legal costs ordered by a Court, and without prejudice to any other rights or remedies available to Ross, if the invoice remains outstanding on the eighth day following receipt, Ross reserves the right to require the Client to pay the higher of the sum of £125 or 10% of the total outstanding charges by way of liquidated damages and as a contribution to the administrative costs incurred by Ross in relation to the outstanding charges.

5.4 There are no rebates payable in respect of Ross's charges.

6. TIME SHEETS

6.1 At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of one week or less or is completed before the end of a week) the Client shall sign a time sheet in such form as Ross requires verifying the number of hours worked by the Temporary Worker during that week and shall give the signed timesheet to the Temporary Worker or directly to Ross.

6.2 The Client shall not be entitled to decline to sign a timesheet on the basis that he is dissatisfied with the work performed by the Temporary Worker. In cases of unsatisfactory work the Client should apply the provisions of clause 12 below. In the event that the Client fails to sign a time sheet the Temporary Worker's record of his/her hours worked will be accepted as conclusive and the Client will be charged on the basis of such hours.

7. REMUNERATION

Ross shall be responsible for payment of the Temporary Worker's remuneration including holiday pay, and where appropriate, for the deduction and payment of Class 1 National Insurance contributions and PAYE income tax under sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003.

8. INTRODUCTION/TRANSFER FEES

8.1 In the event that:

8.1.1 the Client directly employs or engages a Temporary Worker following a Supply, or a Temporary Worker is supplied to the Client by a different employment business following a Supply, in each case within the duration of the Assignment or within the Relevant Period; or

8.1.2 there is an Introduction of a Temporary Worker to the Client which does not result in the Supply of that Temporary Worker by Ross to the Client, but which leads to the engagement of the Temporary Worker by the Client (on any basis whatever, whether permanent, temporary, under a contract for service or for services, via a limited company or otherwise), either directly or pursuant to being supplied to the Client by a different employment business, within 12 months from the date of Introduction by Ross;

the Client shall either:

(a) elect upon giving 7 days' notice to Ross to take an extended period of hire of the Temporary Worker being 26 weeks during which the Client shall pay the current hourly rate agreed pursuant to clause 5.1 above or, if none is agreed, £25 per hour; or

(b) pay to Ross a transfer fee or an introduction fee (as appropriate) calculated as follows:

if the Client employs or engages the Temporary Worker directly following an Introduction or Supply, the fee will be an amount equal to:

15% of the Remuneration if the Remuneration is below £20,000 or an amount equal to

20% of the Remuneration if the Remuneration is above £20,000



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if the Temporary Worker is supplied to the Client via a different employment business, the fee will be Ross's hourly charges applicable to the Temporary Worker in question multiplied by 400.

Where no hourly rate has been quoted or agreed by Ross or is unknown, the transfer/introduction fee will be calculated by reference to an hourly rate of £25.

The Client and Ross agree that if the Client does not give the notice specified in (a) above before the Temporary Worker is engaged by the Client, the applicable transfer/introduction fee specified in clause (b) above shall be payable.

8.2 In the event that there is an Introduction of a Temporary Worker to the Client which does not result in the Supply of that Temporary Worker by Ross to the Client, but the Temporary Worker is introduced by the Client to a third party which results in the engagement of the Temporary Worker by the third party (on any basis whatever, whether permanent, temporary, under a contract for service or for services, via a limited company or otherwise), within 6 months from the date of the Introduction, the Client shall pay to Ross an introduction fee calculated as follows:

Ross's hourly charges applicable to the Temporary Worker in question multiplied by 400. Where no hourly rate has been quoted or agreed by Ross or is unknown, the introduction fee will be calculated by reference to an hourly rate of £25.

8.3 In the event that a Temporary Worker supplied to the Client is introduced by the Client to a third party and this results in the engagement of such Temporary Worker by the third party within the Relevant Period (on any basis whatever, whether permanent, temporary, under a contract for service or for services, via a limited company or otherwise), the Client shall pay to Ross a transfer fee calculated as follows:

Ross's hourly charges applicable to the Temporary Worker in question multiplied by 400. Where no hourly rate has been quoted or agreed by Ross or is unknown, the introduction fee will be calculated by reference to an hourly rate of £25.

8.4 For the avoidance of doubt, there shall be no refund of any transfer fee and no entitlement to a free replacement if the Temporary Worker's engagement by the Client or any third party is subsequently terminated for any reason.

8.5 In the event that the Client engages or employs a Temporary Worker directly following an Introduction or Supply by Ross, the Client will notify Ross within 7 days of the offer of employment or engagement of the Temporary Worker's proposed basic salary or remuneration, together with details of all other emoluments and benefits to which the Temporary Worker will be entitled and will provide Ross (as evidence of such remuneration and benefits) with a copy of the offer letter to and contract of employment of the Temporary Worker, or copies of any other documents provided to the Temporary Worker which clearly show the Temporary Worker's remuneration and benefits.

9. LIABILITY

9.1 Ross shall make all reasonable efforts to ensure that Temporary Workers supplied to the Client are suitable and have the necessary skills and competence to undertake the Assignment. However, Ross cannot accept any liability for any loss, expense, damage or delay arising from any failure to provide any Temporary Worker for all or part of the period following the Client's instruction to Ross to search for a Temporary Worker, from an Assignment ending prematurely or from the negligence, dishonesty, misconduct or lack of skill of a Temporary Worker. This exclusion does not apply to any liability for death or personal injury arising from Ross's own negligence.

9.2 Ross accepts no responsibility for the accuracy of the information supplied pursuant to clauses 4.1 and 4.2 of these terms. The Client is responsible for assessing the suitability of a Temporary Worker and for verifying that a Temporary Worker has the necessary qualifications or authorisation required by law or a professional body in order to carry out the Assignment. The Client is also responsible for ensuring that it has any necessary licences, permits or consents to enable a Temporary Worker to work on a particular Assignment in the place where they are engaged to work.

9.3 Temporary Workers are engaged by Ross under contracts for services. They are not the employees of Ross and will be under the supervision, direction and control of the Client throughout each Assignment.

9.4 The Client agrees to be responsible for all acts, errors or omissions of the Temporary Worker, whether wilful, negligent or otherwise, as though he was the Client's own employee. The Client will also comply in all respects with all statutory requirements including, but not limited to, the Working Time Regulations 1998, and all other Health and Safety at Work regulations to which the Client is ordinarily subject in respect of the Client's own employees (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.



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9.5 The Client shall advise Ross of any special health and safety matters about which Ross is obliged 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 fulfil the Assignment.

9.6 The Client will supply any information about the Assignment reasonably requested by Ross in order to assist Ross to comply with the Working Time Regulations 1998 and the Client will not do anything to cause Ross to be in breach of its obligations under the Working Time Regulations 1998. Where the Client requires the services of a Temporary Worker for more than 48 hours in any week, the Client must notify Ross of this requirement before the commencement of that week.

9.7 The Client undertakes that if it becomes aware of any circumstances which would make it detrimental to the interests of a Temporary Worker to carry out an Assignment it will inform Ross immediately.

9.8 The Client shall indemnify Ross and keep Ross indemnified against any costs, claims or liabilities incurred by Ross arising out of any Assignment or arising out of any non-compliance with clauses 9.3 to 9.6 above inclusive and/or as a result of any breach by the Client of any other clause of this agreement.

9.9 Ross's liability for any breach of these terms or for any liability for its negligence or otherwise (save to the extent that such liability is not capable of being limited by virtue of a statutory provision including but not limited to liability for death or personal injury arising from Ross's negligence) shall not exceed Ross's commission margin for the introduction or supply of the relevant Temporary Worker and Ross will not be liable in relation to any matter (subject to the foregoing qualification in this clause) not reported by the Client in writing within 3 days of its occurrence or the Client's discovery of its occurrence.

10. ADVERTISING

By asking Ross to introduce or supply a Temporary Worker to the Client for a particular Assignment the Client authorises Ross to advertise such Assignment.

11. INDUSTRIAL ACTION

The Client warrants that no Temporary Worker will be used to perform the duties normally performed by a worker or employee of the Client who is taking part in an official strike or other official industrial action or to perform the duties normally performed by any other worker or employee of the Client who has been assigned by the Client to perform the duties normally performed by any worker or employee of the Client who is taking part in an official strike or other official industrial action.

12. TERMINATION

12.1 The Client undertakes to supervise the Temporary Worker sufficiently to ensure the Client's satisfaction with the Temporary Worker's standards of workmanship. If the Client reasonably considers that the services of the Temporary Worker are unsatisfactory, the Client may terminate the Assignment either by instructing the Temporary Worker to leave the Assignment immediately, or by directing Ross to remove the Temporary Worker. Ross may charge a cancellation fee depending on the particular circumstances. Before an Assignment is terminated the Client shall first give notice to Ross and Ross shall have the right to replace the Temporary Worker in question with another individual acceptable to the Client.

12.2 Ross shall have the right to terminate an Assignment without prior notice and without liability if it is unable to continue to provide the Temporary Worker's services, or the services of another individual acceptable to the Client, for reasons beyond its control or if Ross obtains information which gives it reasonable grounds to believe that a Temporary Worker supplied to the Client is unsuitable for the Assignment.

12.3 The Client shall notify Ross immediately and without delay and in any event within 24 hours if a Temporary Worker fails to attend for an Assignment or notifies the Client that he/she is unable to attend the Assignment for any reason.

12.4 This agreement may be terminated at any time by Ross giving the Client not less than 7 days' notice in writing.

12.5 Notwithstanding clause 12.4 above, Ross may terminate this agreement and all Assignments immediately without notice if the Client is in breach of any of the terms of business contained herein.

13. NON-SOLICITATION

During this agreement and for 12 months following the date of the end of the last Assignment, the Client shall not:



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13.1 solicit, entice away or endeavour to entice away any employee of Ross with whom the Client has had material dealings and who is employed by Ross ("**Restricted Employee**"); or

13.2 employ or otherwise engage any such Restricted Employee. In the event that the Client is in breach of its obligations under this clause 13, the Client will be liable to Ross for a fee of £10,000.



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